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1 A. On my legs and on my hand.

2 Q. In what position did you wind up?

3 A. Well, after that they took me by my hand, with my
4 hand up in the hair, I was like this (indicating).

5 Q. Indicating the arms displayed to the rear up in
6 the air in reverse fashion?

7 A. Then they took me to the front of the counter and
8 they slammed me into the counter with -- I don't know how
9 many of them was pulling and tugging on me, the same thing
10 they did at the front door.

11 And then they put a hand on my neck and was
12 squeezing me on the counter.

13 I said, "Can I make a phone call to my wife? Can
14 I tell her what's happening."

15 They said, "No fucking phone call for you," and
16 they started using a lot of nasty languages, MF. They were
17 using a lot of languages. No phone call.

18 While they were squeezing and pushing they went
19 into my pockets and took everything I had on my body.

20 Q. Do you recall if any of those officers were
21 wearing sergeant stripes?

22 A. In the midst of all this incident I didn't have
23 time to even look around. They didn't want me to raise my
24 head.

25 Q. Now, I would like to show you -- withdrawn.

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1 Did there come a time after you were finally
2 released -- withdrawn. I withdraw that question.

3 Did there come a time when you -- another officer
4 came to see you?

5 A. Yeah, a few minutes after a gentleman came and he
6 introduced himself to me as Detective Shulman.

7 Q. And is that the same Detective Shulman who
8 testified here today?

9 A. Yes.

10 Q. And what, if anything, did Detective Shulman do?

11 A. He took me by my hand and he took me upstairs and
12 while he was taking me upstairs he keep pushing me up the
13 stairs. I almost fell like three times.

14 Q. Where was your hands?

15 A. Handcuffed behind my back.

16 Q. And did you fall?

17 A. No.

18 Q. And where did he bring you?

19 A. He bring me to a room that they call the box.

20 Q. Did you see those photographs that we put in
21 evidence before?

22 A. Yes.

23 Q. Was that the room that he took you to?

24 A. That's the room.

25 Q. And where did he put himself relative to you?

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1 A. Sitting on a chair with -- when he took me to the
2 room he slammed me to the wall.

3 Q. How did he slam you to the wall?

4 A. He hold me by my shirt and push me to the wall.

5 Q. Show the Judge how he grabbed you by your shirt?

6 THE WITNESS: May I stand up again?

7 THE COURT: Yes.

8 Q. As if Shulman were in front of you, show him how
9 he grabbed your shirt.

10 Show the Court please?

11 A. He grabbed me like this and pushed me into it
12 wall. Then he pulled me back up and pushed me onto the
13 chair.

14 MR. SCHECHTER: Indicating both hands on the
15 sides of the collar pushing front, pulling back.

16 A. Yes.

17 Q. And then what did he -- did he say anything after
18 he did that?

19 A. No, he took the handcuff off and he left. He left
20 the room, he shut the door.

21 Q. And how long did he leave you there like that?

22 A. A couple -- a few minutes, about 15, 20, minutes I
23 average. I didn't have anything on me to see the time.

24 Q. Would it be fair say this all occurred -- the time
25 you came to the precinct to the time Detective Shulman got

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1 you, how much time elapsed, if you recall?

2 A. Until he got me, about 20 minutes.

3 Q. So it would be about between 2:30 and 3 o'clock,
4 would that be fair to say?

5 A. Yes.

6 Q. In the morning?

7 A. Yes.

8 Q. And how long did he leave you in the room before
9 he came back?

10 A. Give or take, about ten or 15 minutes. I don't
11 recall the time.

12 Q. And when he came back what, if anything, did he
13 say to you?

14 A. He asked me if I know why I'm here.

15 I say, "Yes I came to make a report, my daughter
16 is missing."

17 He said, "Is there anything else you want to tell
18 me?"

19 I said, "No, there's nothing I want to tell you.
20 I just came to report that she's missing."

21 Q. Did he advise you of his rights -- your rights at
22 that time?

23 A. No.

24 Q. So what happened then?

25 A. He left the room and he came back with some papers

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1 in his hands.

2 Q. And were those the papers that you observed your
3 signature on?

4 A. No, it's some papers that had statement that he
5 told me that my step daughter made, accusation against me.

6 Q. Did he show you the papers?

7 A. No, he read it for me.

8 Q. What did he say to you?

9 A. She -- he read some of it and he said that my
10 daughter accused me of sexual harassment.

11 Q. And what did you say to him?

12 A. I said, "Well, this is not true."

13 Q. What happened then?

14 A. He said -- well, he started to read some more. He
15 said, "Anything happen at the fair, morning of the fair?"

16 I said, "No, the only thing happened at the fair,
17 we had an argument."

18 Then he said, "Is there anything you want to tell
19 me?"

20 I said, "No, I don't want to tell you anything
21 else. I just want to make a report that my daughter is
22 missing."

23 But he keep nagging me and cursing at me and then
24 he picked me up again. He said, "I put away people for 20
25 years. I'm going to put you away for a longer time if you

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1 don't tell me what's going on."

2 Q. Did you ask for anything at that point?

3 A. I asked to make a phone call to my wife again.

4 They said, "No fucking phone call for you," again.

5 I said, "Can I speak to a lawyer?"

6 He say, "You're not going to get no lawyer. At

7 this time you're not going to get no lawyer."

8 Q. What happened then?

9 A. He left the room and he came back.

10 Q. And when he came back what, if anything, occurred?

11 A. He sit and he was talking again and asking me
12 question on what my daughter was -- the statement she was
13 making. And he asked me again, "You want to tell me what
14 happened?"

15 And I gave him the story about the fair, what
16 happened at the fair.

17 Q. Did there come a time when he asked you to sign a
18 waiver of rights?

19 A. When he finished talking about the fair he went
20 back outside and he bring this other piece of paper with
21 him.

22 Q. And what was that paper?

23 A. He said it was a memorandum or some paper he
24 mentioned to me.

25 Q. Did you read the paper?

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1 A. He read the paper.

2 Q. And after he read it what did you do, if anything?

3 A. He put yes on the side of it and he told me to
4 initial on the side of it. I didn't answer any of the
5 question.

6 I asked him for a lawyer at the time again and he
7 said, "You're not going to get no lawyer."

8 Q. When -- now, who wrote down the word yes?

9 A. He did, the officer did.

10 Q. And was that written before you were asked
11 questions or after?

12 A. It came in the room with yes on the side of it, on
13 the side of question.

14 Q. And what did you do?

15 A. Well, he made me initial them. He force -- he
16 started to use threats at me and made me initial them.

17 Q. Did he make any threats or promises at that time?

18 A. At that time, no.

19 Q. All right. Did you sign that paper?

20 A. Yes, I did.

21 Q. Did you sign that paper voluntarily?

22 A. No.

23 Q. What happened after that?

24 A. He took the paper outside and he came back with a
25 notepad and a pen.

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1 Q. How long did that transpire?

2 A. I would say about ten minutes again.

3 Q. And did you then -- what, if anything, did you do?

4 A. He asked me to write a statement on what happened
5 at the fair, so I did write a statement on what happened at
6 the fair.

7 Q. And was that a true account of what happened at
8 the fair?

9 A. Yes.

10 Q. And after you wrote that account what, if
11 anything, did he do?

12 A. He took the statement outside and then he came
13 back again. He left the pen and the pad with me. He took
14 the statement out and he came back. About ten or 15 minutes
15 after he came back.

16 Q. What transpired then?

17 A. He asked me -- he told me what my daughter said.
18 He told me -- he read from a paper that what she said and he
19 asked me if I'm going to have to sign a confession paper on
20 what she said.

21 I said, "Why are you doing this to me?" I said
22 can I have a lawyer?"

23 He said, "No, you're not going to have no lawyer."

24 He said, "I'm going to put you away for a long time," using
25 bad words.

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1 So he picked me up on the chair and he pushed me
2 from the chair -- I was facing the door, on the back wall,
3 and he said, "You're going to sign a confession for me."

4 So I -- he said, "If you sign this confession I'm
5 going to take this paper down to my supervisor. He's going
6 to read it. At the end of the paper you're going to put,
7 'I'm sorry and I made a mistake and I'm sorry,' and the
8 supervisor is going to read the paper, going to feel sorry
9 and say, 'This man need help,' and send me home."

10 Q. Did he discuss with you what your daughter told
11 him?

12 A. Yes.

13 Q. How long did that discussion take, please?

14 A. Almost 20 minutes.

15 Q. And did you sign that paper?

16 A. The paper --

17 Q. Did you sign another paper?

18 A. Yes, I did sign another paper.

19 Q. And was that the second confession that we
20 observed in court earlier today?

21 A. Yes.

22 Q. And did that include a description of a vibrator?

23 A. Yes.

24 Q. Who drew the picture?

25 A. He drew the picture.

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1 Q. And what did he say, if anything, at the time he
2 drew the picture?

3 A. He told me that my daughter accused me of using a
4 vibrator on her and she described some -- he said she
5 described a vibrator to him and that's the one he draw on
6 the paper.

7 Q. And what did you say with respect to the vibrator?

8 A. I said this is no description of the vibrator that
9 I have or massager. I use a massager, a folding massager.

10 Q. Now, after that, what happened?

11 A. He took the paper outside and then he came back
12 and he had me sign a confession that I touched my daughter.

13 Q. And how long after -- how long did it take from
14 the time he left until the time he came back?

15 A. Well, every time he go it's like 20 minutes, 15,
16 20 minutes, ten, give or take. I didn't have a watch with
17 me.

18 Q. And what is the next thing that happened, if
19 anything?

20 A. He made me sign a paper, write with my own
21 handwriting, this confession that I touched my daughter.

22 Q. And after you signed that confession what happened
23 then?

24 A. I signed it. He said he going to take it to his
25 supervisor and I'm going to soon be going home.

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1 I asked him for a lawyer again, I asked him for my
2 phone call to my wife, and he said no.

3 Q. All right, and then what happened?

4 A. He took the paper outside and he never came back
5 for a long time after.

6 Q. How long?

7 A. A long while. I --

8 Q. More than an hour?

9 A. It could be.

10 Q. More than two hours?

11 A. I don't know. It could be hour and a half or two
12 hour. I don't know.

13 Q. Did he tell you anything before he left?

14 A. No.

15 Q. Did he come back?

16 A. He came back awhile, long while after.

17 Q. And then what did he say, if anything?

18 A. He said just, "Before you go home I want you to do
19 one thing for me. The same statement you gave on the paper,
20 I want you to give testimony on video camera." He said,
21 "The Assistant District Attorney is going to come in here
22 and they're going to do a video camera on you."

23 Q. And did you ask him when?

24 A. No.

25 Q. All right, after he came and told you the

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1 District Attorney is going to come and take a statement from
2 you, what happened?

3 A. I asked him for a lawyer again.

4 Q. And what happened then?

5 A. He said, "If you get a lawyer now then we start
6 all over again. You're not going to go home. You're not
7 going to go home." He said, "So you're not going to get no
8 lawyer." He said, "When you come in, look at the camera.
9 Look at the people who asked the question. Just try to be
10 calm and answer questions."

11 Q. Did there come a time when the District Attorneys
12 did come to the precinct?

13 A. Yeah, they came a long time after, very long time.

14 Q. Incidentally, you saw Officer Alfaro in this
15 courtroom about ten minutes ago?

16 A. Yes.

17 Q. And she testified that she took you from the room
18 downstairs.

19 Is that true?

20 A. No.

21 Q. Tell the Court what happened?

22 A. Ms. Alfaro came in. I don't know what time it
23 was, but it was a long time after the videotape. It was a
24 long time upstairs. She came and she came with
25 Detective Shulman and he introduced her to me and then he

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1 give me a lecture about I'm a horrible person and a lot of
2 nasty things he was saying to me in front of her.

3 And he said, "She's going to take you downstairs
4 and process you and then you're going to go to the court in
5 Queens."

6 Q. Now, there came a time after you made -- we saw
7 the video statement you made in court?

8 A. Yes.

9 Q. Now, on that video statement you were read your
10 rights on camera, is that correct?

11 A. Yes.

12 Q. You were also read the paper on camera and signed
13 it on camera, is that correct?

14 A. Yes.

15 Q. Was that done freely or voluntarily?

16 A. At that point in time it was, but I was prompt by
17 Mr. Shulman to do the same thing I did in the room.

18 Q. Well, did he say anything prior to you signing
19 that confession or signing the waiver of rights?

20 A. In the room.

21 Q. What did he say?

22 A. He said, "The same paper you sign in here is the
23 same question they're going to ask you outside. You do the
24 same thing and give up that right."

25 Q. Did he promise you anything if you signed that

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1 waiver?

2 A. With the District Attorney he said they're going
3 to go and talk to the supervisors downstairs and I'm going
4 to be going home. He said that's the last thing he wanted
5 me to do before I go home.

6 Q. So prior to your waiving your rights
7 Detective Shulman promised you that if you signed that
8 waiver and made statements to the District Attorney you
9 would be leaving and going home, is that correct?

10 A. Yes.

11 Q. Okay. Now, there came a time when you were
12 brought -- let me ask you this.

13 When for the last time did you get any sleep prior
14 to making any statements to Detective Shulman?

15 A. Sunday night.

16 Q. So how long have you been awake at the time that
17 you went to the precinct?

18 A. Well, I left my house on Monday day around 6
19 o'clock in the morning and I didn't go home until just
20 before 2 o'clock Tuesday morning.

21 Q. So Tuesday morning at 2 o'clock you went home, but
22 did you sleep at the time you went home?

23 A. No.

24 Q. And then you went to the precinct?

25 A. I did not sleep there either.

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1 Q. So you had not slept from Sunday at 6 o'clock
2 through the time the statements were taken by the
3 District Attorney, would that be fair to say?

4 A. Yes, no sleep.

5 Q. Were you offered anything to eat or drink by
6 either Detective Shulman or the District Attorney?

7 A. I was offered something to drink in the evening of
8 when the District Attorney came. They give me a bottle of
9 water.

10 Q. And prior to that District Attorney giving you a
11 bottle of water, which was over ten hours or 12 hours from
12 the time you went to the precinct, did you have anything to
13 eat?

14 A. No.

15 Q. Or drink?

16 A. No.

17 Q. Now, Detective Shulman testified that he gave you
18 an opportunity to go to the bathroom.

19 Is that true?

20 A. Yes.

21 Q. When did that occur?

22 A. Sometime in the day. I was in the room. I don't
23 know if it's daylight or night, so I would say it was that
24 day.

25 Q. Aside from going to the bathroom did you have

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1 anything to eat or drink or did you get any sleep for over
2 15 hours?

3 A. No.

4 Q. Now, there came a time when you were -- when you
5 went to court, is that correct?

6 A. Yes.

7 Q. And there was a time when bail was set?

8 MS. JOHNSON: Objection.

9 THE COURT: I'll allow it.

10 Q. And bail was set for you, correct?

11 A. Yes.

12 Q. And there came a time when you made bail and you
13 left the court?

14 A. No, I didn't make bail.

15 Q. Well, there came a time sometime afterwards that
16 you were released from court after bail was made for you, is
17 that correct?

18 A. I made bail from the jail.

19 Q. From the jail, okay.

20 Do you remember when that was?

21 A. I think it was Thursday the 27th.

22 Q. Thursday?

23 A. Yeah.

24 Q. And after left jail where did you go?

25 A. I came to your office.

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1 Q. And after my office where did you go?

2 A. To the hospital.

3 Q. Which hospital did you go to?

4 A. Long Island Jewish hospital.

5 Q. And when you went to the hospital what, if
6 anything, did you say?

7 A. I went to the emergency and I told them that --
8 what happened to me and I needed to get a physical check.

9 Q. And while you were at the hospital were any
10 pictures taken of you?

11 A. Yes.

12 Q. And who took those pictures?

13 A. My niece.

14 Q. What's her name?

15 A. Roxanne Seunarine, S-e-u-n-a-r-i-n-e.

16 MS. JOHNSON: Your Honor, if counsel is
17 planning on showing pictures now, we haven't been privy
18 to anything and it was part of a reciprocal demand
19 months ago.

20 MR. SCHECHTER: I did not have an opportunity
21 to give these pictures.

22 I also did not know until now that I would
23 either be using them or not using them, but they are
24 pictures of the injuries that my client has, in fact,
25 sustained.

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1 THE COURT: Okay, Mr. -- I have no problem
2 with you using the pictures.

3 I just have one question.

4 Did you ask him if he went to a hospital
5 after leaving your office?

6 MR. SCHECHTER: Yes.

7 THE COURT: And the answer was?

8 THE WITNESS: Yes.

9 MR. SCHECHTER: Yes, Long Island Jewish
10 Hospital.

11 Q. Now, I would like to show you a series of
12 photographs.

13 MR. SCHECHTER: I believe this is -- would be
14 Defendant's G for identification.

15 Is that what we're up to?

16 THE COURT: Defendant's G.

17 MR. SCHECHTER: G,H,I,J.

18 (Defendant's Exhibits G, H,I and J so marked
19 for identification.)

20 Q. Mr. Gopaul, I show you Defendant's G,H,I and J for
21 identification.

22 Do you recognize those photographs?

23 (Shown to witness.)

24 A. Yes.

25 Q. Except for the fact that some of the wounds are

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1 clotted, do those photographs fairly and accurately reflect
2 how you appeared upon leaving the police precinct on
3 June 24th, 2008 -- 2008?

4 A. Yes.

5 Q. And --

6 MR. SHECHTER: I ask that those be marked
7 into evidence as Defendant's G, H, I and J?

8 THE COURT: Ms. Johnson?

9 VOIR DIRE EXAMINATION

10 BY MS. JOHNSON:

11 Q. Mr. Gopaul, who took those photos?

12 MR. SCHECHTER: Is this voir dire?

13 MS. JOHNSON: I'm sorry, if I may, Judge?

14 THE COURT: Yes.

15 Q. Who took those photos?

16 A. My niece.

17 Q. Where?

18 A. In Long Island Jewish Hospital.

19 Q. What date?

20 A. The night of the 27th, Thursday.

21 Q. June 27th, 2008?

22 A. Yeah, going into the morning time. I didn't check
23 the time.

24 MS. JOHNSON: I have no objection.

25 THE COURT: Okay, so without objection

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1 they'll be received in evidence.

2 (Defendant's Exhibits G,H,I and J received in
3 evidence.)

4 MR. SCHECHTER: For the record, your Honor, I
5 will try to obtain duplicate copies of those for
6 counsel. If I can't, I'll make photocopies for her.

7 THE COURT: Okay.

8 MS. JOHNSON: Thanks.

9 DIRECT EXAMINATION CONT'D

10 BY MR. SCHECHTER:

11 Q. All right, now, Mr. Gopaul, I direct your
12 attention to those photographs.

13 Could you please look at them?

14 (Shown to witness.)

15 Q. Now, the first photograph that you're looking at,
16 that's Defendant's G, what is that a photograph of?

17 A. Photo of my leg.

18 Q. And do you recall when you received those -- the
19 injury?

20 A. The morning of the arrest. The morning of
21 Tuesday, the 24th.

22 Q. And how did you receive that injury?

23 A. With the police officers pulling at me and
24 scratching.

25 Q. All right, thank you.

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1 I direct your attention to Exhibit H.

2 What is that?

3 A. L.

4 Q. Make sure that you looked at the right photo.
5 Look at the back.

6 COURT OFFICER: The last one was J.

7 MR. SCHECHTER: I apologize. Make that
8 Exhibit J, the scratch on the leg. I stand corrected.

9 Q. Mr. Gopaul, please look on the back of the photo
10 for the exhibit?

11 A. All right, this is H.

12 Q. What exhibit are you looking at now?

13 A. H.

14 Q. What does Exhibit H show?

15 A. This is my belly.

16 Q. And what is it a picture of?

17 A. The surgery that I had a few years ago.

18 Q. And what, if anything, happened at the precinct
19 with respect to that area?

20 A. I had a lot of pain on my abdomen at that time.

21 Q. What was that pain from?

22 A. From the slamming on the counter.

23 Q. Okay, thank you.

24 A. From the police officers.

25 Q. And what are you looking at now?

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1 A. I.

2 Q. I'm sorry?

3 A. I.

4 Q. And what is I a picture of?

5 A. My elbow.

6 Q. Sorry?

7 A. My arm.

8 Q. And do you see any injuries on that photograph?

9 A. Scratches, yeah.

10 Q. And what are those scratches from?

11 A. The police officers.

12 Q. And how were they incurred?

13 A. By pulling at me and scratching at me.

14 Q. And the last photograph, what number is that?

15 A. G.

16 Q. All right, what is that a photograph of?

17 A. It's my abdomen again.

18 Q. Sorry?

19 A. My belly.

20 Q. And that is the same injury that you had described
21 before, the hernia operation?

22 A. Yes.

23 Q. And -- what -- when you struck the counter what
24 part of your body came in contact with the counter?

25 A. Well, my belly hit the counter and then they

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1 pushed my head, neck and everything down and they were
2 holding it down on the counter.

3 Q. Now, you indicated you went to Long Island Jewish
4 Hospital, correct?

5 A. Yes.

6 Q. And when you went to Long Island Jewish Hospital
7 what were your complaints?

8 A. The bruises, the scratches I had and the pain on
9 my neck and my belly.

10 Q. I show you this document --

11 (Shown to counsel.)

12 Q. -- from Long Island Jewish Hospital.

13 MR. SCHECHTER: Let the record reflect I am
14 showing it now to the District Attorney.

15 (Shown to counsel.)

16 Q. Now, Mr. Gopaul, can you identify this document?

17 MR. SCHECHTER: Please have it marked as, I
18 think it's, K?

19 THE COURT: We'll mark it.

20 (Defendant's Exhibit K marked for
21 identification.)

22 Q. Now, Mr. Gopaul, is that the medical record that
23 you obtained from the hospital that you went to for
24 treatment?

25 A. Yes:

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1 MR. SCHECHTER: I'll offer that in evidence,
2 your Honor, as Exhibit K.

3 THE COURT: Ms. Johnson?

4 MS. JOHNSON: For the hearing, I have no
5 objection.

6 THE COURT: Marked Defendant's K in evidence.
7 (Defendant's Exhibit K received in evidence.)

8 MR. SCHECHTER: I have no more questions,
9 Judge.

10 (Shown to Court.)

11 THE COURT: Just give me a second.

12 (Pause in the proceedings.)

13 THE COURT: Okay, Ms. Johnson.

14 CROSS-EXAMINATION

15 BY MS. JOHNSON:

16 Q. Mr. Gopaul, do you read English?

17 A. Yes.

18 Q. Do you write English?

19 A. Yes.

20 Q. Do you have a high school diploma?

21 A. Nope.

22 Q. What's the highest level of school you completed?

23 A. Elementary, seven standard. Not here, in my
24 country.

25 Q. And what country would that be?

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1 A. Trinidad and Tobago.

2 Q. When you first walked into the precinct on
3 June 24th, 2008 to report your daughter was missing, was it
4 a police officer that you met with to speak to?

5 A. Yes.

6 Q. How many police officers did you end up speaking
7 to while in the entranceway of the 105th Precinct?

8 A. One.

9 Q. One?

10 A. Yes.

11 Q. Then you tell us that other officers came around?

12 A. Yes.

13 Q. How many?

14 A. Eight or nine. Could be ten, give or take.

15 Q. Men and women?

16 A. No, only men.

17 Q. Were they in uniform?

18 A. Yes.

19 Q. What did they do?

20 Tell us exactly what they did to you?

21 A. When the officer -- the one officer came up to me
22 and asked me what I came here for and I told him -- I give
23 him my name and address, I give him my step-daughter name
24 and address.

25 Then he took my hand --

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1 Q. Okay, I'm going to stop you for one second.

2 How did he take your hands?

3 A. He hold it with his hand.

4 Q. Your left hand or right?

5 A. My left hand first and he slammed me into the
6 wall.

7 Q. How was he grabbing onto your left arm?

8 A. With his hand.

9 Q. Tight?

10 A. Yes.

11 Q. What was he saying?

12 A. When he hold me and slam me to the wall, at that
13 time he tell the to guys cuff me.

14 Q. Before he slammed you to the wall what did he say
15 before he grabbed your arm?

16 A. Nothing. He asked me that question and grabbed me
17 and slammed me to the wall.

18 Q. What were the other officers doing when he grabbed
19 your hand?

20 A. They were all using words and saying, "Cuff him."

21 Q. What were the words they were using?

22 A. They said, "Fucking cuff him. Cuff him."

23 Q. What else did they say?

24 A. They said, "Take him up to the box."

25 Q. All nine of them were saying that?

Gopaul - Defendant - cross

308

1 A. Well, I didn't count, you know.

2 Q. Were you able to see the officers?

3 A. No, they had my head down. They don't want me to
4 look around.

5 Q. How were they holding your head down?

6 A. Well, I was against the wall, they had me against
7 the wall.

8 Q. How did they slam you against the wall?

9 A. They hold my hand and turned me and pushed me into
10 the wall.

11 Q. How many of them slammed you against the wall?

12 A. One. The first time it was one.

13 Q. And the first time being when you were at the
14 entrance to the 105th Precinct?

15 A. Yes.

16 Q. What were the other officers doing while the one
17 officer slammed you to the wall?

18 A. They start to pull and tug on me.

19 Q. And how long how were they pulling and tugging on
20 you?

21 A. They had my hand behind my back, spread my legs,
22 searching my pockets, squeeze my chest, my legs.

23 Q. All nine of them?

24 A. Well, as far as -- a lot of hands on me. I don't
25 know if it was all nine, but all nine of them was around me.

Gopaul - Defendant - cross

309

1 Q. How many hands did you feel on you?

2 A. A lot of hands.

3 Q. More than one?

4 A. Yes.

5 Q. More than five?

6 A. Yes.

7 Q. How many voices did you hear?

8 A. There were many voices. I didn't count the
9 voices, but there was more than one voice.

10 Q. Where on your body were the hands grabbing you?

11 A. All over my legs, my hands, my back, my belly.

12 Q. What about your face?

13 A. My face was against the wall.

14 Q. How did your face get against the wall?

15 A. With the officer slamming me to the wall.

16 Q. Did your face smack against the wall?

17 A. No. When he pushed me, my head was off the wall,
18 but when they start to push me my head went into the wall.

19 Q. What's the wall made out of?

20 MR. SCHECHTER: Objection.

21 How does he know?

22 THE COURT: Presumably, he was there. Maybe
23 he does know.

24 Do you recall what the wall was made of?

25 THE WITNESS: It could be sheetrock, it could

Gopaul - Defendant - cross

310

1 be concrete. I don't know.

2 Q. Was it padded?

3 A. I don't know.

4 Q. You don't know if it was a padded wall?

5 A. No.

6 Q. Do you know if it was a concrete wall?

7 A. Not for sure, no.

8 Q. Was it hard?

9 A. It was hard.

10 Q. What did it feel like when your face slammed
11 against the wall?

12 A. I don't know, it was with so many people around me
13 I didn't have time to think what wall it was.

14 Q. How did it feel, though?

15 A. Well, it feel like a wall.

16 Q. Did it hurt?

17 A. Yeah.

18 Q. What type of pain did you feel?

19 A. Pain.

20 Q. Yes. What type of pain did you feel?

21 A. I feel pain when they was pulling my legs open.

22 Q. On your face where did you feel pain?

23 A. I didn't feel pain on my face.

24 Q. Your face made contact with the wall, but you
25 didn't feel pain?

Gopaul - Defendant - cross

311

1 A. They didn't slam my face to the wall, they just
2 slammed me into the wall. My head was away from the wall at
3 the time. Then they pushed my face into the wall.

4 Q. Well, when they pushed your face into the wall
5 what part of your face made contact with the wall?

6 A. The side of my face.

7 Q. Which side?

8 A. The right side.

9 Q. Which part of the right side, your cheek?

10 A. Yeah, the whole side of my face.

11 Q. And when you say the whole side of the face does
12 that mean your eye also?

13 A. No.

14 Q. Your cheek?

15 A. My cheek.

16 Q. Your jaw?

17 A. Well, my jaw is in front, so the side of my face.

18 Q. The side of your jaw?

19 A. Yes.

20 Q. That made contact with the wall as well?

21 A. Yes.

22 Q. And the wall was hard?

23 A. Yes.

24 Q. And your face was pushed against that hard wall?

25 A. Yes.

Gopaul - Defendant - cross

312

1 Q. And what happened once your face was against the
2 wall?

3 A. They put the handcuff on me.

4 Q. Who is they?

5 A. One of the officers put the handcuff on me.

6 Q. Were the other officers still around you?

7 A. Yes.

8 Q. What did they say to you once your face was
9 against the wall?

10 A. They were using nasty languages.

11 Q. What were they saying?

12 A. They were saying, "Cuff the fucking guy," you
13 know, "We're going to take him up. The chicken came home to
14 roost."

15 Q. Who said the chicken --

16 A. One of the officers.

17 Q. Did you forget that on direct examination?

18 A. At that time, yeah.

19 Q. What position were your legs in when your face
20 made contact with the wall?

21 A. It was spread apart.

22 Q. Who spread them out?

23 A. The officers.

24 Q. How many?

25 MR. SCHECHTER: Objection, been asked and

Gopaul - Defendant - cross

313

1 answered about three times already, Judge.

2 THE COURT: Yeah, sustained.

3 Q. How far were your legs spread open?

4 A. As far as they can go.

5 Q. Were you on the ground or were you standing?

6 A. Standing.

7 Q. And what part of your legs were being touched?

8 A. My whole leg. From my calves, come all the way up
9 to my groins.

10 Q. Did one of the officers touch your groin?

11 A. One of them touch. They were squeezing me.

12 Q. Where were they squeezing you?

13 A. All over, my legs, my hands, my belly, my groins,
14 my back. They were squeezing me.

15 Q. Were you wearing long sleeves or short sleeves?

16 A. Long sleeve.

17 Q. A T-shirt under the long sleeve?

18 A. No.

19 Q. You weren't wearing a T-shirt under the long
20 sleeve?

21 A. No.

22 Q. Did you have a chance to see the video that was
23 played here?

24 A. Yes.

25 Q. You saw that before you came to court today?

Gopaul - Defendant - cross

314

1 A. Yes.

2 Q. So that saw that in your attorney's office?

3 A. Yes.

4 Q. And it's your testimony you weren't wearing a
5 T-shirt underneath the long-sleeved shirt?

6 A. No.

7 Q. Were you wearing pants or shorts?

8 A. Long pants.

9 Q. Jeans or pants?

10 A. Cintas working pants. The brand-name pants. It's
11 a working pants. Blue pants.

12 Q. Like a uniform pants?

13 A. Uniform pants.

14 Q. You drove the Ecolab vehicle to the precinct that
15 day, right?

16 A. Yes.

17 Q. No one else had keys to it?

18 A. No.

19 Q. No one else was in it to your knowledge?

20 A. No, that I know.

21 Q. You hadn't given anybody else a key?

22 A. No.

23 Q. You hadn't seen anybody else drive it?

24 A. No.

25 Q. After your legs were spread what were the officers

Gopaul - Defendant - cross

315

1 doing?

2 A. They took me by my hand, as I showed before, and
3 they pulled me into the front of the counter on the other
4 side of the building.

5 Q. Tell us how they took your hands.

6 What did they actually do?

7 A. They put my hands above my head on my back and my
8 head was like bending to the floor.

9 Q. Did your head make contact with anything?

10 A. No, not at that time.

11 Q. Did your head eventually make contact with
12 something?

13 A. Yes, when they pushed me into the counter.

14 Q. When they pushed you into the counter what part of
15 your body made contact with the counter?

16 A. My belly and my chest and shoulder part and they
17 were pushing me down.

18 Q. What about your head?

19 A. My head was on the counter.

20 Q. How did your head come into contact with the
21 counter?

22 A. By them pushing me down.

23 Q. Who is they?

24 A. The officers.

25 Q. And when you say that they pushed you into the

Gopaul - Defendant - cross

316

1 counter, what part of your head did they push into the
2 counter?

3 MR. SCHECHTER: Objection, this is ad
4 nauseam. I think she's gone through this four or five
5 times already.

6 THE COURT: Yeah, sustained.

7 MS. JOHNSON: Can I see the pictures, Judge?

8 THE COURT: Which ones?

9 MS. JOHNSON: The ones that are in evidence.
10 I don't think he has them.

11 THE COURT: I gave them back to somebody.

12 MR. SCHECHTER: Gee, I'm sorry, my bad.

13 (Shown to counsel.)

14 Q. Would you agree -- it's your testimony there was
15 more than one officer that slammed your head into the
16 counter?

17 A. Yes.

18 Q. I'm going to show you Defendant's Exhibit G.

19 (Shown to witness.)

20 Q. Can you show us on Defendant's Exhibit G where
21 your -- where it was that your head made contact with the
22 counter and with the wall in the precinct?

23 A. When they pushed me down my head turned on the
24 side, the same right side when they pushing my shoulder.

25 I couldn't keep it down because the counter was

Gopaul - Defendant - cross

317

1 hard. I had to turning to the side.

2 Q. I'm asking you where it was on that picture?

3 A. On this side.

4 Q. And can you tell us where the injury is on your
5 face that you sustained as a result of being pushed into the
6 wall?

7 A. I didn't get injuries on my face.

8 Q. And you didn't get any injuries on your face when
9 you were slammed into the counter?

10 A. They didn't slam my head on the counter, they
11 slammed my chest and then they pushed my head down.

12 Q. I'm going to show you -- did you take a picture of
13 your chest?

14 A. I didn't take any. My niece took the photos.

15 Q. Did anybody take a picture of your chest?

16 A. That, I can't recall. I don't know.

17 Q. Did you go to Mr. Schechter's office before or
18 after you went to the hospital?

19 A. I went to his office before.

20 Q. So you went to Mr. Schechter's office first and
21 then you went to Long Island Jewish?

22 A. Yes.

23 Q. And after you went to Mr. Schechter's office those
24 pictures were taken?

25 A. Yes.

Gopaul - Defendant - cross

318

1 Q. I'm going to show you what's been marked as
2 People's Exhibit 1 in evidence.

3 If you could take a look at that?

4 (Shown to witness.)

5 Q. Whose name appears on the bottom of that form?

6 A. This is my name.

7 Q. You wrote your name on there, correct?

8 A. Yes.

9 Q. You signed your name, correct?

10 A. Yes.

11 Q. You initialed your name, correct?

12 A. Yes.

13 Q. You initialed it on June 24th, 2008, correct?

14 A. Yes.

15 Q. In the presence of Detective Shulman, right?

16 A. Yes.

17 Q. His gun was not present, right?

18 A. Yes.

19 Q. His gun was present?

20 A. Yes.

21 Q. And what was he doing with his gun?

22 A. I don't know. He had it on his holster.

23 Q. Did he take it out?

24 A. No.

25 Q. But you saw it?

Gopaul - Defendant - cross

319

1 A. Yes.

2 Q. And that gun was -- you saw that gun in the
3 interview room?

4 A. Yes.

5 Q. Okay. Detective Shulman, read you the rights that
6 appear in People's 1, correct?

7 A. He didn't read this to me. He bring it -- already
8 had yes on it in the room.

9 Q. So by the time you saw that, yes was already
10 written on the form?

11 A. Already on it.

12 Q. What about on the video?

13 You were provided almost the exact -- in fact, the
14 exact same form on the video, correct?

15 A. Yes.

16 Q. Was yes on that document or --

17 A. No, the District Attorney put the yes on there.

18 Q. In your presence?

19 A. Yes.

20 Q. But Detective Shulman put yes before you got that?

21 A. Yes.

22 Q. And you initialed next to it after you read the
23 paperwork?

24 A. I didn't read the paper.

25 Q. You weren't given that paper?

Gopaul - Defendant - cross

320

1 A. I didn't get it to read.

2 Q. So when was it that you put your initials next to
3 it?

4 A. After -- when he bring it to me he said -- I asked
5 him for a lawyer and I asked him for the phone call.

6 He said no. He said, "Right now you're going to
7 sign me a confession," and he give me this to put my
8 initials on the side of it.

9 Q. He handed you the piece of paper?

10 A. Yes.

11 Q. He handed you a pen?

12 A. Yes.

13 Q. You had that piece of paper in your hand, correct?

14 A. It was on the desk.

15 Q. And nobody else was in the room, right?

16 A. No.

17 Q. And you put your initials next to each one of
18 those questions?

19 A. Yes.

20 Q. And nothing was covering that piece of paper,
21 correct?

22 A. No.

23 Q. You were able to read it?

24 A. No.

25 Q. Why weren't you able to read it?

Gopaul - Defendant - cross

321

1 A. I didn't have my glasses. I had to go down to
2 read and I couldn't go down to read.

3 Q. What does the first line say?

4 A. You have the right to remain silent.

5 Q. Are you wearing your glasses now?

6 A. No.

7 MS. JOHNSON: Can I have that back, please?

8 (Shown to counsel.)

9 THE COURT: Are you all right, Mr. Schechter?

10 MR. SCHECHTER: Yeah, I just banged my leg,
11 Judge. It's okay.

12 MS. JOHNSON: Are you all right?

13 MR. SCHECHTER: Yeah, I'm fine.

14 Q. When you asked Detective Shulman if you can call
15 your attorney, who was it that you were planning on calling?

16 A. I didn't ask him to call my attorney. I asked him
17 to call my wife.

18 Q. Well, you said you asked Detective Shulman if you
19 could speak to an attorney, correct?

20 A. And I wanted a lawyer.

21 Q. And who was it that you were going to call?

22 A. I was going to call my wife to call a lawyer. I
23 didn't have a lawyer at the time.

24 Q. I'm going to show you what's been marked as
25 People's Exhibit 2 in evidence.

Gopaul - Defendant - cross

322

(Shown to witness.)

1

2

Q. Do you recognize that?

3

A. Yes.

4

Q. Whose signature appears on the bottom of that?

5

A. Mines.

6

Q. Whose name appears on the bottom of that?

7

A. My name.

8

Q. You signed your name on that?

9

A. Yes.

10

Q. You signed that in the presence of

11

Detective Shulman, correct?

12

A. Yes.

13

Q. You read that form, right?

14

A. He read it for me.

15

Q. He read it out loud to you?

16

A. Yes.

17

Q. And then he gave it to you, correct?

18

A. Yes.

19

Q. Who signed and dated it?

20

Who put the date on it?

21

A. I put the date.

22

Q. You put the time as well, correct?

23

A. Yes, he told me the time, I put it on.

24

Q. You knew the date, right?

25

A. Until he told me, yes.

Gopaul - Defendant - cross

323

1 Q. Did you read that before you signed it?

2 A. Detective Shulman read it for me.

3 Q. So you just signed it?

4 A. Yes.

5 Q. I'm going to show you People's 3.

6 (Shown to witness.)

7 Q. You signed the bottom of People's 3, correct?

8 A. Yes.

9 Q. You dated it, correct?

10 A. Yes.

11 Q. You wrote your name on it, correct?

12 A. Yes.

13 Q. That was read to you, correct?

14 A. Yes.

15 Q. That was provided to you?

16 A. Yes.

17 MS. JOHNSON: I'm sorry.

18 (Shown to counsel.)

19 Q. And both of those consent forms were given to you
20 after Detective Shulman read you those Miranda rights,
21 correct?

22 A. He didn't read the rights to me.

23 Q. Those two consent forms were signed after he read
24 you those rights, correct?

25 A. He didn't read the rights to me.

WS

Gopaul - Defendant - cross

324

1 Q. Okay. I'm going to show you the first statement
2 that you gave Detective Shulman, People's 4.

3 (Shown to witness.)

4 Q. Is it fair to say Detective Shulman provided you
5 with a blank pad and pen?

6 A. Yes.

7 Q. That was after he read your Miranda rights,
8 correct?

9 A. He didn't read the right.

10 Q. The pad was blank when it was given to you,
11 correct?

12 A. Yes.

13 Q. Now, you testified before on direct that he
14 prompted you to write that statement, correct?

15 A. He had his notes with him and he was telling me
16 what to write on the paper. Most of it is what he made me,
17 from his notes. He asked me question from his notes. He
18 told me what my stepdaughter said on his notes and then he
19 had me do this paper.

20 Q. Tell us how it is that he made you write that
21 piece of paper?

22 A. Well, by using languages, bad languages, to me and
23 screaming at me.

24 Q. What was that bad language that he was using?

25 A. He was saying if I don't sign this fucking thing

Gopaul - Defendant - cross

325

1 I'm not going to go home. He was using the MF word.

2 Q. What's an MF word?

3 A. Motherfucker. He was using those words at me.

4 He was over me on the table. He was like leaning
5 like almost want to grab me.

6 Q. When you say he was leaning almost like he was
7 going to grab you, he didn't grab you, right?

8 A. No, he didn't grab me, but his hand was out.

9 Q. And what was his hand doing?

10 A. His hand was in my face.

11 Q. What was his hand doing in your face?

12 What do you mean by that?

13 A. Talking and waiving at me.

14 Q. Talking with his hands?

15 A. Just wavering, yeah.

16 Q. Did his hands ever make contact with your body?

17 A. When he slammed me to the walls, yeah.

18 Q. So when he slammed you to the wall how does it
19 come about that his hands are on your body?

20 A. He hold me by my shirt.

21 Q. How was he holding you by your shirt?

22 A. Grabbed my shirt and pushing me to the wall, slam
23 me to the wall.

24 Q. What part of your body made contact with the wall?

25 A. My back.

WS

Gopaul - Defendant - cross

326

1 Q. Your entire back?

2 A. Yes.

3 Q. Did you have pain?

4 A. Yes.

5 Q. Where did you have the pain?

6 A. On my neck and shoulders.

7 Q. Did you have trouble sitting after that?

8 A. I was uneasy with it.

9 Q. You had the opportunity to see the video, right?

10 A. Yes.

11 Q. You were able to move your arms in the video,
12 correct?

13 A. Yes.

14 Q. You lifted your arms, right?

15 A. Yes.

16 Q. You moved your arms, correct?

17 A. Yes.

18 Q. You were able to describe how you were touching
19 your daughter by using your arm movements, correct?

20 A. Yes.

21 Q. Did you ever complain of any pain on that video?

22 A. No.

23 Q. Did you ever ask for medical attention on the
24 video?

25 A. No.

Gopaul - Defendant - cross

327

1 Q. Did you ever see any weapons drawn on that video?

2 A. No.

3 Q. Did you ever get threatened by any of the DAs on
4 that video?

5 A. No.

6 Q. Anybody lay a hand on you on that video?

7 A. No.

8 Q. Did you ever ask to speak to a lawyer on that
9 video?

10 A. They asked me if I wanted to speak to a lawyer,
11 but the detective told me if I ask for a lawyer I'm not
12 going to go home, it going to be worse for me, it's going to
13 be worse, so just do the same thing, sign the Miranda that I
14 did in the room and they going to take it up to the
15 supervisor downstairs and they going to have an agreement to
16 send me home.

17 Q. Nobody told you on that video what to say,
18 correct?

19 A. No.

20 Q. You were free to answer questions, correct?

21 A. Well, I was free to answer question, but I was
22 scared of the detective.

23 Q. And what do you mean by you were scared of him?
24 What were you afraid he was going to do?

25 A. Probably going to take me back to the room and do

Gopaul - Defendant - cross

328

1 something to me again. I don't know.

2 Q. What were you afraid he was going to do?

3 A. Slam me to the wall, hit me or something.

4 Q. Were you afraid of the prosecutor?

5 A. No.

6 Q. Were you afraid of the videographer?

7 A. No.

8 Q. And what was it about the detective's presence in
9 that video that you were concerned about?

10 A. After the interview, what they going to do to
11 me -- what he going to do to me.

12 Q. What did he say he was going to do to you?

13 A. He didn't say nothing at the time.

14 Q. He didn't tell you he was going to beat you up
15 after the video?

16 A. No.

17 Q. He didn't show his gun to you during the video?

18 A. No.

19 Q. You had the opportunity while that video was being
20 taped to ask for an attorney, correct?

21 A. Yes.

22 Q. You had the opportunity to stop that video,
23 correct?

24 A. Yes.

25 Q. You had the opportunity to say you no longer

Gopaul - Defendant - cross

329

1 wanted to answer any questions, correct?

2 A. Yes.

3 Q. You had the opportunity to tell the DA that this
4 video was over, correct?

5 A. Yes.

6 Q. You didn't have any trouble moving your arms on
7 the video, correct?

8 A. No.

9 Q. Did you ever make a complaint with Internal
10 Affairs about what Detective Shulman allegedly did to you?

11 MR. SCHECHTER: I'm going to object.

12 He has two pending indictments against him.
13 Making a complaint to Internal Affairs with another
14 statement when he has counsel is not exactly the
15 appropriate thing to do.

16 It's an improper question.

17 MS. JOHNSON: Judge, he's saying that police
18 officers beat him up.

19 Obviously, if there's any merit to it I have
20 the right to inquire as to whether or not he made a
21 complaint about it.

22 MR. SCHECHTER: If he makes a complaint with
23 another statement he's further incriminating himself,
24 Judge. He has a right to counsel.

25 THE COURT: I'm going to overrule the

WS

Gopaul - Defendant - cross

330

1 objection.

2 Q. Did you make a complaint to Internal Affairs about
3 Detective Shulman?

4 A. No.

5 Q. Did you make a complaint to Internal Affairs about
6 any of the officers?

7 A. No.

8 Q. Did you make a complaint to the precinct about any
9 of the officers?

10 A. No.

11 Q. Did you make a phone call to the precinct about
12 what they did to you?

13 A. No.

14 Q. Did you tell the detective in Nassau County what
15 Detective Shulman did to you?

16 A. I don't recall.

17 MS. JOHNSON: I'm going to ask that this be
18 marked as People's 8 and 9 for identification.

19 MR. SCHECHTER: Can I see them, please?

20 (Shown to counsel.)

21 MR. SCHECHTER: Your Honor, I'm going to
22 object..

23 Counsel intends to show the witness something
24 that happened well -- over one month after the incident
25 and it's an interview sheet regarding his present

Gopaul - Defendant - cross

331

1 condition after he was arrested in Nassau County. It
2 has no relevance here.

3 THE COURT: I have, obviously, no idea what
4 she's marking and what the exhibit is.

5 Do you want to make an offer?

6 MS. JOHNSON: Yes, Judge.

7 It's the 79, physical condition
8 questionnaire, taken in Nassau County where -- my offer
9 of proof is the defendant is asked is he in good
10 health, does he have any injuries --

11 THE COURT: And when is he asked those
12 questions?

13 MS. JOHNSON: July 31st, 2008.

14 THE COURT: So what bearing would that have
15 on what took place from June 24th to June 27th?

16 MS. JOHNSON: Because defendant is saying he
17 had an injury from a hernia that was exacerbated by
18 these police officers. That would have been in the
19 paperwork.

20 MR. SCHECHTER: He just said he's in pain.

21 THE COURT: If that's your offer, the
22 objection is sustained.

23 MR. SCHECHTER: Thank you, Judge.

24 MS. JOHNSON: Sustained as to the questions
25 or the offering of the documents, your Honor?

Gopaul - Defendant - cross

332

1 THE COURT: It's sustained as to the document
2 and any questions relating to what he may have been
3 asked a month later.

4 Q. Mr. Gopaul, the statement -- the first statement
5 that you gave to Detective Shulman regarding what happened
6 at the fair, was that statement true or false?

7 A. It's true.

8 MR. SCHECHTER: Objection, that's improper.
9 Thirty years that's been an improper question, to ask
10 the truth or falsity of the statements.

11 THE COURT: Would you just read back the
12 question, please?

13 (Record read.)

14 MR. SCHECHTER: Withdraw the objection.

15 THE COURT: And you answered that,
16 Mr. Gopaul?

17 A. Yes.

18 Q. Yes, it's true?

19 A. Yes.

20 Q. And it's your testimony that you were forced into
21 giving a true statement?

22 A. No, I gave the truth on that statement.

23 Q. After you were issued Miranda warnings?

24 A. Yes.

25 Q. Okay. And as to the second statement that you

Gopaul - Defendant - cross

333

1 gave to Detective Shulman, was that an accurate --

2 A. Can you repeat?

3 MR. SCHECHTER: Now I'm going to object to
4 that statement.

5 The law is, Judge, that it's improper at a
6 Huntley Hearing to ask the witness, the defendant,
7 whether or not the statement made was true.

8 I think it's been the law for 30 years. I
9 had the case. I read it yesterday. Unfortunately, I
10 can't find it, but I looked at that possibility.

11 THE COURT: I'm going to sustain the
12 objection.

13 MS. JOHNSON: I didn't ask him if it was the
14 truth, I asked him if it was accurate.

15 MR. SCHECHTER: Same idea.

16 THE COURT: Truth, accuracy. Quite frankly,
17 I think they're interchangeable under these
18 circumstances.

19 I also would think, Ms. Johnson, you could
20 anticipate what the answer will be to that question.

21 MS. JOHNSON: As would I, most likely (sic).

22 Q. Mr. Gopaul, you also indicated on direct that that
23 was Detective Shulman who drew the picture of the vibrator?

24 A. Yes.

25 Q. Was that following a conversation that you had

Gopaul - Defendant - cross

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1 with him?

2 A. Yes.

3 Q. And was that following a conversation about a
4 vibrator?

5 A. Yes.

6 Q. You signed that piece of paper, correct?

7 A. Yes.

8 Q. You signed it underneath the question and answer,
9 is that fair to say?

10 A. If I see the paper I'll know. I think so.

11 Q. Sure.

12 MS. JOHNSON: Give me one second.

13 (Pause in the proceedings.)

14 Q. Well, let me ask you this.

15 Was there already a picture of a vibrator on the
16 piece of paper when you signed that paper?

17 A. No.

18 Q. So the picture of the vibrator was put after you
19 signed it?

20 A. No, it was before. No, it was put before I signed
21 the paper.

22 Q. So the vibrator was on the piece of paper before
23 you signed it?

24 A. Yes.

25 Q. After a conversation you had with

Gopaul - Defendant - cross

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1 Detective Shulman about vibrators that you had?

2 A. Yes.

3 Q. And you indicated that you were provided with a
4 bottle of water?

5 A. Yes, from the ADA.

6 Q. And you were permitted to go to the bathroom?

7 A. Not at that time.

8 Q. Well, you were permitted to go to the bathroom,
9 correct?

10 A. Yeah, but I didn't have to use the bathroom at
11 that time.

12 Q. You saw the video yesterday?

13 A. No, I was on the back of it.

14 Q. You've seen the video before?

15 A. I saw it before.

16 Q. Do you see any injuries on your face?

17 A. No.

18 Q. Do you see any injuries on your hands?

19 A. No.

20 MR. SCHECHTER: I'm going to object.

21 He never claimed there were injuries to his
22 face or hands, Judge.

23 The injuries were to his neck, his belly, his
24 arms and his legs.

25 He never said anything about his hands.

Gopaul - Defendant - cross

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1 THE COURT: The record will speak for itself.

2 MS. JOHNSON: I have nothing else.

3 MR. SCHECHTER: No redirect.

4 THE COURT: Mr. Gopaul, you testified before
5 that you were released from jail.

6 In other words, you were brought to court,
7 you were arraigned and then you bailed out, am I right?

8 THE WITNESS: When they set the bail for me
9 my wife didn't reach in time or I think she didn't have
10 the money at the time, so the time ran out on the court
11 and they had to put me in the Bronx.

12 THE COURT: So you were transferred to --

13 THE WITNESS: To the Bronx.

14 THE COURT: -- to a correctional facility in
15 the Bronx?

16 THE WITNESS: The boat?

17 I think they call it the boat.

18 THE COURT: The what?

19 THE WITNESS: The boat.

20 THE COURT: And when you went over to that
21 facility was there any type of medical screening given
22 to you at that point --

23 THE WITNESS: Yes.

24 THE COURT: -- by people at the New York City
25 Correctional Department?

WS

Gopaul - Defendant - cross

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1 THE WITNESS: Yes.

2 THE COURT: And did they ask you if you had
3 any injuries?

4 THE WITNESS: Yes.

5 THE COURT: Did you say whether or not you
6 had any injuries similar to what you said in
7 Defendant's K in evidence?

8 THE WITNESS: No, no.

9 THE COURT: All right.

10 Anybody have any questions as a result of
11 mine?

12 MS. JOHNSON: I was just going to ask -- I'm
13 assuming those are not the complete medical records
14 from LIJ.

15 If counsel is planning on offering them --

16 MR. SCHECHTER: It's an emergency room. He's
17 only in the emergency room.

18 THE COURT: Okay. Thank you very much.

19 MS. JOHNSON: Can I actually ask just a
20 couple of questions?

21 THE COURT: Yes.

22 MS. JOHNSON: Just briefly.

23 Q. Mr. Gopaul, were you housed with other inmates in
24 the Bronx?

25 A. Yes.

Gopaul - Defendant - redirect

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1 Q. Were you housed with other inmates at the
2 105 Precinct?

3 A. No.

4 Q. Were you housed with other inmates at
5 arraignments?

6 A. Yes.

7 Q. In one big cell?

8 A. Yes.

9 MS. JOHNSON: I have nothing else.

10 REDIRECT EXAMINATION

11 BY MR. SCHECHTER:

12 Q. Mr. Gopaul, did you have any scuffles with any
13 other inmates while you were in jail?

14 A. No.

15 THE COURT: Okay, you can have a seat.

16 (Witness excused.)

17 THE COURT: Mr. Schechter --

18 MR. SCHECHTER: May it please the Court, your
19 Honor, I understand the reason for your Honor's
20 questions regarding the outcry of Mr. Gopaul when he
21 was at the facility in the Bronx.

22 The question really -- with all due respect,
23 your Honor, no allegation has been made that Mr. Gopaul
24 suffered lasting or permanent injuries.

25 Rather, the proffer has been made that the

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1 police officers set upon him and at the time they set
2 upon him he was pulled, prodded, scratched, bruised,
3 bent and suffered these injuries and under compulsion
4 made these -- waived his rights and made these
5 statements.

6 There's never been any allegation that the
7 injuries he sustained were permanent. It doesn't have
8 to be permanent.

9 As a matter of fact, the police are very
10 well-schooled in how to utilize physical force to
11 extract confessions or to extract what they want to
12 extract without causing observable injuries.

13 THE COURT: If I could just interrupt you.

14 My question to you was, and maybe I wasn't
15 clear, are you resting?

16 MR. SCHECHTER: I rest.

17 THE COURT: Okay. So now you're making
18 closing arguments?

19 MR. SCHECHTER: I am.

20 THE COURT: Go ahead.

21 MR. SCHECHTER: If it please the Court, your
22 Honor, it is respectfully submitted that the statements
23 that were extracted from my client were extracted from
24 him after protracted, protracted, delays.

25 As a matter of fact, I still haven't

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1 gotten -- and I ask the Court to draw an unfavorable
2 inference against the prosecution because of the
3 failure to provide the required discovery material,
4 namely the early entries of that log that we had
5 already requested and based upon what counsel said
6 there has been no equivocation about us wanting that
7 log.

8 They have been stonewalling us with officers,
9 stonewalling us with information, stonewalling us with
10 discovery information from the Police Department.

11 Your Honor, my client testified he was at
12 that precinct approximately 2:30, that when he got to
13 the precinct he was set upon by approximately nine to
14 ten officers who manhandled him, threw him against the
15 rail, threw him against the wall, scratched him in the
16 course of having him handcuffed and searched and then,
17 shortly thereafter, Detective Shulman came and took him
18 upstairs, threw him up the steps, he almost fell, but
19 he did not fall, went into the room. Detective Shulman
20 grabbed him by the collar, threw him against the wall
21 and pushed him back.

22 If your Honor looks at that, as I'm sure you
23 did because I drew your Honor 's attention to it in the
24 video, my client's collar is quite distended and it's
25 very consistent that the distension of his collar is

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1 consistent with someone who grabs someone, spreads the
2 collar, throws him and pushes him back. There's no
3 reason for his collar to look like that absent somebody
4 using that kind of force against him.

5 It is apparent, your Honor, that my client
6 was the victim of force. Police officers, for their
7 own particular reasons or prejudices, felt that they
8 needed to act forcefully against my client.

9 It was in that atmosphere that Detective
10 Shulman, who also acted forcibly against my client,
11 attempted to extract a confession from him.

12 After he then physically abuses him he then
13 gives him the life preserver. This is the technique
14 called the Reid technique that is used by the police
15 departments, even though he denied its use. You first
16 act violently, make the person desperate, then you
17 throw out the life preserver. The life preserver is
18 you make a confession, you're going home.

19 Everybody, especially those who are not
20 familiar with the criminal justice system, everyone
21 grabs for that life preserver. They'll say anything
22 they want them to say thinking they're going home.
23 That's what Detective Shulman did to my client.

24 Thereafter, with that in mind,
25 Detective Shulman wanted to keep that going so that

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1 when my client was about to give the video statement
2 Detective Shulman promised him, "Look, all you got to
3 do is tell that same thing to the DA you told me."

4 You get a cop -- rather, "You get an
5 attorney, then we're going back to square one and
6 you're not getting out of here. I'm just warning you
7 right now before you go and speak to the District
8 Attorney."

9 So that force, those actions by the
10 detective, were not in any way ameliorated or had any
11 kind of separation from the initial physical abuse that
12 my client suffered. There's not been any attenuation
13 of that because Detective Shulman saw that there was
14 not going to be an attenuation by continuing the abuse
15 and the threats and the life preserver, namely that my
16 client, if he makes a statement to the District
17 Attorney, will be released.

18 That was the atmosphere under which he gave
19 the statements. They were statements which were forced
20 out of him. They were extracted out of him at pointed
21 fists, not by reason, not by an intelligent waiver.

22 He had requested an attorney. Those requests
23 were completely tossed aside by Detective Shulman. My
24 client, as he said, was going to call his wife to get
25 an attorney.

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1 He did not, at that point, know he had -- an
2 attorney would be appointed for him because by that
3 time Detective Shulman said, "You're not getting any
4 attorney," so he had no expectation of getting an
5 attorney and for that reason he, at that time, felt
6 isolated, he felt alone, which is what they want to do.

7 He was kept, your Honor, from 2:30 in the
8 morning on June 24th until the following night, until
9 around a quarter to 9. That's a long time to be in
10 custody, Judge, especially with no sleep, no food and
11 one bathroom break.

12 Now, under those circumstances the
13 confessions that were extracted from him were done
14 absent a reasonable and thoughtful and unforced waiver.

15 The consents obtained to search his vehicle
16 were extracted in the same methodology. He gave those
17 with the same abuse in his mind.

18 Therefore, the consents to search were also
19 not done properly and they were extracted violently and
20 for those reasons I'm respectfully asking that the
21 Court suppress the statements that were made by my
22 client, suppress the evidence seized from his vehicle
23 and from his house, and for those reasons I
24 respectfully ask the Court grant that relief.

25 THE COURT: People, before you begin, I am

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1 directing you -- because I had my law secretary check
2 to see if, perhaps, somebody faxed over the first sheet
3 of that log sheet.

4 I am asking to you produce that for
5 Mr. Schechter.

6 And, Mr. Schechter, if need be, if you need
7 to make whatever application you feel you need to make
8 upon reviewing it, I'll let you.

9 He's entitled to it and, quite frankly, I
10 think he should have had it already.

11 Do you want to say anything?

12 MS. JOHNSON: I do. I don't know if you
13 wanted me to make a phone call.

14 THE COURT: You can do it after, because
15 obviously we're not going to get it before 4:35.

16 MS. JOHNSON: And if I have it after the
17 close of business of court, I'll fax it to Court and
18 counsel.

19 Your Honor, it's our position, and the
20 evidence has shown beyond a reasonable doubt, that not
21 only did the defendant knowingly, voluntarily and
22 intelligently waive his Miranda rights, his right to
23 counsel, but he also was adequately advised of his
24 Miranda rights.

25 I'll first address counsel's arguments.

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1 Your Honor, this is an issue of credibility
2 as to whether or not the Court is going to believe what
3 the defendant says or whether or not the Court is going
4 to believe what the detective says.

5 In order to believe what the defendant says,
6 that he was roughed up by nine police officers, that
7 they slammed him against the wall, they slammed him in
8 the interview room, they slammed him against the
9 counter, it belies logic.

10 When the court looks at the very photographs
11 that the defendant has submitted, there is no injury on
12 the defendant's face.

13 There is a scratch on his body and there's a
14 bruised belly button from a previous hernia surgery.

15 Not only did the defendant's own pictures not
16 comport with his own testimony, but the very video that
17 was played in court, the defendant is lifting his arms,
18 moving his arms, making hand gestures, able to answer
19 questions, no injury on his face. The defendant even
20 admits there's no injury on his hands.

21 The defendant's own video, the capturing of
22 his own image, both by himself and by the videographer,
23 let's just say, doesn't even comport with his own
24 testimony as to what happened.

25 In fact, Judge, he never made any complaints

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1 to anybody about any injury. He never made any
2 complaints on the video, never asked to speak to an
3 attorney on the video.

4 I think that the very tone of how the video
5 was taken, the conversational aspect of it between the
6 defendant and the DAs and the defendant and even
7 Detective Shulman, it belies logic that the defendant
8 was even laid a hand on by any members, much less nine
9 officers or Detective Shulman.

10 Be that as it may, Judge, the Court has seen
11 the Miranda form signed by the defendant on 5:15 -- at
12 a 5:15. Detective Shulman testified he read it to the
13 defendant, he himself indicated yes and the defendant
14 signed, initialed, this document.

15 It was dated. It was timed.

16 Detective Shulman's testimony should be
17 deemed by the Court as credible that the defendant not
18 only wrote his name, but signed his name after the
19 Miranda warnings were issued.

20 We submit to the Court that this is an
21 adequate issuance of Miranda rights. The defendant
22 knowingly waived it. He was read these rights. He was
23 provided the copy of it. He signed it.

24 There was no indication, no testimony from
25 Detective Shulman, that at any time was his gun

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1 present, that the defendant asked to speak to an
2 attorney, that the defendant asked to cease the
3 interview.

4 In fact, Detective Shulman indicated the
5 defendant was quite cooperative with him. He was not
6 handcuffed. There was no force used upon him nor any
7 threats.

8 In fact, Judge, the defendant was provided --
9 as far as the written statements go, the defendant was
10 provided a blank piece of paper to make two statements
11 to Detective Shulman in his own handwriting where the
12 defendant himself provided his own information, the
13 date, the time.

14 It belies logic that Detective Shulman, who
15 testified that his gun was fully secured,
16 Officer Alfaro, who corroborated Detective Shulman that
17 it's Police Department police to secure their weapon --
18 none of the People's witnesses indicated that any
19 threats any force or any coercion was used upon this
20 defendant to sign a true statement in the defendant's
21 own words as to what happened with his daughter at the
22 fair.

23 Detective Shulman indicated unequivocally
24 that at no time did the defendant have any questions.

25 In fact, the defendant made his own changes

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1 on one of the documents when he changed the date. He
2 changed the date from the 22nd to the 21st.

3 At no time did he ask to speak to an
4 attorney, did he indicate he wanted to cease the
5 interview or that he had any questions.

6 There was no language barrier. There was a
7 conversation and, in fact, a tone of cooperativeness
8 with Detective Shulman that continued onto the video.

9 After the Miranda was issued, after the first
10 statement was signed, after both consent forms were
11 signed by the defendant -- which I'll actually note,
12 your Honor, not one question out of defense counsel's
13 mouth to Detective Shulman was about the consent forms
14 signed by the defendant. Nothing was questioned of
15 Detective Shulman about the defendant being provided
16 the consent forms, being read the consent form or even
17 signing it.

18 The second statement, we submit to the Court,
19 just like the first one, was a knowing, voluntarily,
20 intelligently-obtained statement.

21 This defendant again was provided a pen and a
22 piece of paper.

23 Detective Shulman indicated no threats were
24 made to the defendant, no promises were made, no gun
25 was present, no coercion was used and, again, the

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1 defendant was handcuffed -- the defendant was
2 handcuffed, in fact, brought to the restroom at the
3 defendant's own request.

4 As to the question and answer and the
5 photograph that was drawn by the defendant after
6 Miranda was issued, after Miranda was waived, again,
7 Detective Shulman indicated that the defendant drew
8 this picture, never asked to speak to an attorney,
9 never asked to cease the interview, that there was, in
10 fact, a rapport between the two of them and the
11 defendant was willing to speak to him.

12 I think, your Honor, the video speaks for
13 itself. At no time during the video were any weapons
14 present. At no time were any physical force, threats
15 coercion or any physical tactics used upon the
16 defendant.

17 In fact, counsel said and the defendant said
18 that the detective told the defendant that all he had
19 to do was repeat what he told Detective Shulman in the
20 video.

21 If the Court looks at the video, that's not
22 even what happened. The defendant gave more
23 information, more details and expanded his statement,
24 so obviously it belies logic that the detective would
25 have told the defendant that he must repeat what he

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1 gave the detective when the defendant himself gives
2 more information on the video.

3 Your Honor, we have the luxury of having an
4 actual videotaped statement here rather than simply
5 relying on what I do submit to the Court is credible
6 testimony by the detective.

7 At no point does the defendant complain of
8 any injury, ask to cease the interview, ask to speak to
9 an attorney. He's provided Miranda warnings again,
10 he's read them by the District attorney.

11 In fact, he continues his conversation with
12 Detective Shulman on the video when Detective Shulman
13 asks him questions in the presence of the District
14 Attorney -- in fact, both Assistant District Attorneys.

15 We would submit to the Court, your Honor,
16 that based on the fact that the Miranda warnings were
17 knowingly, voluntarily, intelligently waived,
18 adequately supplied, adequately read, the defendant not
19 only orally waived them, but waived them in writing and
20 at no time invoked his right to counsel.

21 We would submit to the Court that the
22 statements, the two written statements, the question
23 and answer, as well as the video that was subsequent to
24 another Miranda warning, as well as the property that
25 was received, we submit that all of that should be

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1 permitted to be introduced by the People on our direct
2 case.

3 THE COURT: All right, speaking of the video,
4 is the waiver form that was signed in that video, I'm
5 assuming that's separate and distinct from the one that
6 Detective Shulman referred to at the -- when he
7 initially met the defendant?

8 MS. JOHNSON: That is what my understanding
9 is by looking at the video, your Honor, because when
10 the Assistant District Attorney gives the video to --
11 gives the Miranda form to the defendant, I believe he
12 addresses again that, "This is a Miranda form similar
13 to the one that had been provided to you before," and
14 the defendant is observed on the video signing it yet
15 again.

16 MR. SCHECHTER: I don't think it was offered
17 in evidence, Judge.

18 THE COURT: That's my point. I've only seen
19 one Miranda waiver form that's allegedly signed by the
20 defendant.

21 In other words, my question is, there appears
22 to be a separate Miranda form that was produced during
23 the beginning -- during the videotaped confession
24 that's referred to by the assistant DAs from Queens, is
25 there not?

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1 MS. JOHNSON: There is, your Honor, and the
2 substance of that video that is read again to the
3 defendant and the defendant orally, on the video,
4 waives those rights yet again and is observed on the
5 video signing that document again.

6 THE COURT: Right, but do we know where that
7 document is?

8 MS. JOHNSON: I believe it was already
9 provided.

10 THE COURT: Well, in any event, Ms. Johnson,
11 you're relying upon the video and -- with respect to
12 the waiver insofar as the videotaped confession is
13 concerned.

14 MS. JOHNSON: I am relying on both the
15 Miranda warnings that were issued by Detective Shulman
16 that continued and I'm also relying on the additional,
17 sort of like a belts and suspenders, that was issued to
18 the defendant on the video.

19 It's our position, your Honor, that the
20 waiver that was signed by the defendant in the presence
21 of Detective Shulman was still sufficient on the video.
22 We rely on that and we also rely on the additional
23 Miranda given on the video by the prosecutor.

24 MR. SCHECHTER: The best evidence of the
25 waiver is the document itself, Judge, which was never

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1 produced or admitted.

2 THE COURT: Well, that's why I asked if the
3 People are relying upon what -- I mean, obviously the
4 videotape is in evidence and I assume that that's what
5 they're relying upon.

6 All right, I'm going to reserve decision
7 until tomorrow at this point. It's getting a little
8 late.

9 Just a couple of matters before we go.

10 I have ordered a panel for tomorrow
11 afternoon. It's my hope that we'll begin jury
12 selection at some point tomorrow afternoon.

13 After my decision tomorrow we need to
14 address, counsel, your motion in limine.

15 MR. SCHECHTER: Yes.

16 THE COURT: People, I've not received any,
17 although -- and I trust that you'll have case law for
18 the Court as well as counsel.

19 MS. JOHNSON: Yes, Judge.

20 THE COURT: That you provide it to us as soon
21 as possible because I want to get that out of the way
22 before, obviously, jury selection starts.

23 Mr., Schechter, I know my law secretary has
24 been looking at some of these documents I indicated
25 that we received in response to the subpoenas.

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1 I would like to take a look at them myself.
2 Hopefully, I'll be able to do it this evening. I
3 haven't had a chance, obviously, today, and as soon as
4 I can I will provide them to you.

5 MR. SCHECHTER: Thank you, Judge.

6 THE COURT: Just in terms of as you leave, in
7 terms of jury selection, Mr. Schechter, I know you
8 haven't tried a case in front of me.

9 I don't know, Ms. Johnson, if you have.

10 MS. JOHNSON: We were in the midst of it last
11 time.

12 THE COURT: So you are somewhat familiar.

13 I don't use a questionnaire, Mr. Schechter.
14 I do cover topics with the jurors myself about
15 background, law enforcement, victim of a crime,
16 testifying in the grand jury or criminal/civil
17 proceeding.

18 I do cover rather extensively beyond a
19 reasonable doubt in my pre-charge, police witnesses,
20 that they should be treated like anybody else, burden
21 of proof as well as presumption of innocence.

22 I mean, there may be something I may be
23 missing from here.

24 If you want me to charge that no inference,
25 adverse inference, is to be drawn with respect to your

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1 client should he choose not to testify, please remind
2 me of that tomorrow.

3 MR. SCHECHTER: I do, your Honor.

4 As a matter of fact, if my client doesn't
5 testify I do request that that be charged to the jury.

6 THE COURT: Just let me know before we begin,
7 this way I'm alerted to it.

8 MS. JOHNSON: Are we reporting here tomorrow?

9 THE COURT: You're going to be reporting here
10 at least in the morning. Where I'll be in the
11 afternoon is anybody's guess.

12 Twenty minutes the first round, 15 minutes
13 each succeeding round.

14 What we usually do is get about 75 people in
15 so, you know, by the time the second round is done
16 everybody has kind of heard each of your respective
17 voir dires.

18 MR. SCHECHTER: My concern, your Honor, I
19 respect that kind of analysis, however under the facts
20 of this case, because of the nature of the charges and
21 because of the type of community we have here out in
22 Nassau County, the predispositions or the possible
23 prejudices of the individual jurors vis-a-vis the
24 allegations, which based upon what I know about the
25 case, could result in some inflammatory testimony on

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1 the part of the complainant, I need to try to ascertain
2 from the individual jurors whether the fact of the
3 allegations of a case are such that they would not be
4 able to be fair and impartial and that's a subjective
5 issue.

6 THE COURT: Well, of course it's a subjective
7 issue what I generally do is I usually -- I should have
8 prefaced my comments with regard to jury selection
9 saying I generally pre-charge -- not pre-charge, I
10 pre-screen.

11 I'm going to tell the jurors to expect to be
12 here for at least two weeks, that if anybody has a
13 planned vacation, medical procedure, business trip, any
14 issue with health care or elder care, that they can't
15 sit, that we get rid of them, if you will. So the
16 panel of people that we have are people that we know at
17 least can sit.

18 And I generally will ask the jurors -- I'll
19 tell them a little bit about the case. Obviously, I'm
20 not going to say too much and essentially say is there
21 anybody here, because of the nature of the charges,
22 feels that they cannot be fair and impartial.

23 I mean, obviously you can explore that in
24 your jury selection.

25 MR. SCHECHTER: Okay.

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1 THE COURT: I'm not going to do an individual
2 questioning of the 14 prospective jurors as to their
3 subjective beliefs. I think we'll know pretty quickly
4 who's willing to sit on this kind of case and who's
5 not.

6 All right, Ms. Johnson, please call this
7 detective.

8 MS. JOHNSON: I will, Judge. I have his cell
9 phone number, I'll call him.

10 THE COURT: And get this time log here and
11 I'll see all of you here tomorrow about 10 o'clock.

12 MR. SCHECHTER: Thank you, Judge.

13 (Proceedings adjourned to Wednesday, May 6th,
14 2009 at 10 o'clock a.m.)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : CRIMINAL TERM PART 80

-----X
THE PEOPLE OF THE STATE OF NEW YORK, : Indictment
: No. 2415N/08
-against- :
:
HAROLD GOPAUL, : Sex Abuse 1
:
Defendant. : Huntley/Mapp
-----X Hearings

May 6, 2009

252 Old Country Road
Mineola, New York

B E F O R E:

HONORABLE JAMES P. McCORMACK,
Acting Supreme Court Justice

A P P E A R A N C E S:

(As previously noted.)

* * * * *

THE CLERK: This is the continued hearing,
the People against Harold Gopaul, Indictment 2415N of
2008.

MS. JOHNSON: For the People, Jamie Johnson.

MR. SCHECHTER: On behalf of the defendant,
Harold Gopaul, Donald R. Schechter, 80-02 Kew Gardens
Road, Kew Gardens, New York.

THE COURT: As I indicated at our bench

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1 MS. JOHNSON: Yes, Judge.

2 With regards to the People's Molineaux
3 application, the People seek to introduce on our direct
4 case evidence surrounding the physical and sexual abuse
5 of the victim in this matter by this defendant that
6 occurred in Queens County that involves not only
7 slapping and hitting the victim, but particularly with
8 regards to the sexual abuse involving touching of her
9 vagina, touching --

10 THE COURT: I'm sorry to interrupt you, just
11 give me one minute.

12 MS. JOHNSON: Sure.

13 (Pause in the proceedings.)

14 THE COURT: I'm sorry, go ahead.

15 MS. JOHNSON: Your Honor, with regards to the
16 sexual abuse allegations the People seek to admit
17 evidence on our direct case regarding particular
18 instances of sexual abuse and the general course of
19 abuse between this defendant and the victim;
20 specifically, touching of her breasts, touching of her
21 vagina, instances of force, including threats, force
22 including physical abuse, as well as displaying of
23 weapons to the complainant.

24 Your Honor, it is our position, and the case
25 law we believe supports us, that this -- these prior

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1 bad acts of sexual abuse and physical abuse, not only
2 the circumstances surrounding them, but the threats
3 that accompany them, are relevant and probative and
4 permissible under Molineaux.

5 With regards to motive, intent, absence of
6 mistake by the defendant, we submit that it is
7 admissible to explain all those factors.

8 It is also admissible to show the narrative
9 of the events that occurred in Nassau County as well as
10 why the victim disclosed the abuse when she did, how
11 she disclosed it, who she disclosed it to, the timing
12 of her disclosure and to explain the relationship she
13 had with this defendant.

14 As the Court's aware, the 14 counts in the
15 indictment all have an element of force that the People
16 have to prove beyond a reasonable doubt, the element of
17 force being in the mind of the victim, how she felt and
18 her state of mind regarding why she feared the
19 defendant. Not only why she feared him at the time of
20 each instance, but how that fear progressed.

21 So, first, with regards to motive and intent,
22 I provided counsel and the Court with two cases,
23 People v. Jackson and People versus Brown, where
24 particularly in sex abuse cases - and you'll excuse me,
25 I'm just going to pull that out now - in

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1 People v. Jackson the court held that in sex crimes
2 where there is prior sexual abuse against a particular
3 victim, when a defendant expresses his desire to engage
4 in future sexual misconduct with that same victim, it
5 is evidence of that -- such as that to establish the
6 defendant's motive and the defendant's intent.

7 Here, the defendant himself on video and the
8 victim herself will testify that the defendant
9 expressed to her that he wished for her to -- that he
10 wished that he be the one and that he wished to
11 escalate their relationship to future sexual contacts,
12 particularly sexual intercourse.

13 We submit that People v. Jackson and
14 People versus Brown supports our introduction of that
15 statement and the testimony surrounding his future
16 intent to engage in additional sex abuse with her.

17 People v. Jackson is a Court of Appeals case
18 from 2007 where, in a rape prosecution, evidence of
19 prior uncharged sexual assaults against even another
20 person was admitted appropriately to demonstrate
21 defendant's future intent to rape the victim in that
22 particular trial.

23 There was a statement that the witness was
24 able to testify to where the defendant expressed his
25 future intent to her for his intent to engage in a sex

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1 crime against her.

2 That's exactly the situation we have here.

3 We don't even have speculation as to whether or not the
4 victim knew about that intent. The defendant himself
5 on the video and the victim herself heard the
6 defendant's statement of the future intent as he
7 expressed it directly to her.

8 With regards to People versus Brown, that is
9 a Third Department case from 2007. In
10 People versus Brown the court held where there was
11 statements of future intent by the defendant against
12 the very same victim, the court ruled, and the
13 Appellate Division upheld, that this was probative and
14 admissible to establish a future intent to have sexual
15 contact with the victim as well as to show the threat
16 of the defendant's future desires.

17 Not only did the court rule that it was
18 probative and admissible for intent, but the court also
19 indicated that it was relevant background information
20 to explain the events that were the subject of the
21 trial.

22 Your Honor, even more importantly, not only
23 the statement of his future intent, but it is the
24 circumstances surrounding it that the jury must be made
25 to understand.

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1 None of the defendant's statements of future
2 intent or his threats to her or the force occurred in a
3 vacuum. They all occurred during other instances of
4 sexual conduct and sexual abuse.

5 It is not as though the defendant simply
6 pulled her to the side during dinner and said, "You're
7 going to be the one and we're going to have sex on a
8 particular date."

9 It was during other instances of abuse where
10 he was touching her vagina, placing his mouth on her
11 vagina, touching her breasts and having her touch his
12 penis that these conversations took place.

13 As to absence of mistake, your Honor,
14 People versus Young, which is a case from 1984, touches
15 upon not only in sex crimes why this type of testimony
16 is evidence to show lack of mistake, but the court even
17 goes so far to explain that in situations where there
18 is an intimate relationship, and I don't mean a sexual
19 relationship, a relationship of trust and a
20 relationship of authority, the trier of fact must
21 understand how it is that the defendant, when there's
22 an element of force, exerted his control and exerted
23 his authority to engage in the sexual abuse.

24 In People versus Young, that's a
25 Fourth Department case from 1984, the court goes

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1 through all the elements of Molineaux and goes so far
2 as to say, "Where evidence of the prior uncharged
3 sexual contacts between the defendant and his daughter
4 was directly probative of the crime charged and was
5 necessary to aid the fact finder in determining the
6 defendant's intent, it was admissible."

7 The court even says that in situations to
8 convict a father of an intimate caressing touch, even
9 of a sexual part, the court must be careful to have
10 clear and convincing evidence beyond a reasonable doubt
11 of the defendant's intent.

12 And it was because of the court's concern
13 about the intimate authority relationship and
14 father-figure relationship in Young that the court
15 allowed evidence of the defendant's prior touching to
16 show that it wasn't simply a mistake of a
17 father-daughter relationship, it was actually to show
18 the motive and to show the intent and to show the lack
19 of mistake because of the prior abuse.

20 THE COURT: Wait, let me just interrupt you
21 for a moment.

22 You started off by saying that you're looking
23 to show prior instances of sexual abuse as well as a
24 course of history of sexual abuse between the defendant
25 and the complainant.

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1 Obviously, there comes a point, I think you
2 would agree with me, that in terms of the number of
3 instances you're looking to elicit that are not part of
4 your indictment, there's going to come a point where
5 the scale is going to tip to the point where the
6 evidence is going to become more prejudicial than its
7 probative value for the reasons that you're looking to
8 introduce.

9 You've mentioned on a number of occasions an
10 incident where you claim that your complainant said
11 that the defendant here told her, "I want to be the
12 one," and had spoke of a future date in which he was
13 going to have sexual intercourse with the complainant.

14 And I think if I understand your theory of
15 your case, that's what prompted her to go to the police
16 or leave the house, whatever the circumstances may be.

17 I would hope that you're not looking to
18 introduce every prior act that he's charged with in
19 Queens County. I don't know how many there are. From
20 speaking to both you and Mr. Schechter it's obvious
21 that there's more instances -- and maybe I'm wrong, but
22 it sounded as though there's more instances he's
23 currently facing charges on in Queens as opposed to
24 this court.

25 MS. JOHNSON: That's correct. We are not

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1 looking to introduce every single instance in Queens,
2 we're looking for the appropriate balance so the jury
3 can understand.

4 THE COURT: I know what you're espousing
5 here, but for me to be able to give a ruling and for
6 Mr. Schechter, obviously, to be able to respond, what
7 instances are you -- instead of telling me
8 generalities, what is it are you looking to elicit?

9 MS. JOHNSON: We're looking to elicit when it
10 was that the abuse began.

11 THE COURT: In terms of the time?

12 MS. JOHNSON: Correct.

13 The nature of the progress of it without even
14 particularizing dates, your Honor. If she can even
15 say, "While I was a certain age," or over the course of
16 a year it progressed from a touching to a kissing to
17 more invasive touching, that type of conduct.

18 We're not looking for the victim to take the
19 witness stand and make out, beyond a reasonable doubt,
20 all the elements of the Queens indictment. That's not
21 what the purpose of this is.

22 The purpose is so that the jury is not seeing
23 a girl on the witness stand saying that her step-father
24 or father abused her without understanding that this is
25 not just something that happened in a vacuum.

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1 In fact, there was a grooming process in
2 Queens County and a grooming process where this
3 behavior not only escalated, but the threats escalated,
4 the abuse escalated and the relationship changed.

5 I think it's important that the jury
6 understand --

7 THE COURT: Well, relationship changed in
8 what sense?

9 From father-daughter to sexual encounters
10 that did not have the element of force, then at some
11 point -- I don't know.

12 MS. JOHNSON: Yes, Judge.

13 THE COURT: At some point there was an
14 element of force that was introduced into it?

15 MS. JOHNSON: Yes, Judge. At first there was
16 not an element of force and the touching was, I hate to
17 say, as a statutory, but there was no threat, there was
18 no coercive environment. It was not a threat as we
19 have in this environment, but a threat in the course of
20 environment simply based on the father figure
21 relationship and where it occurred and how it occurred.

22 The defendant would say to this girl, to his
23 daughter, don't tell anybody. Whether that would rise
24 to the level of force is certainly an argument, but
25 that type of coercive environment was how the

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1 relationship began and how it progressed into actual
2 force, both expressed and implied, and it is because it
3 started out as don't tell anybody, happening in
4 private, happening in their own home, in the safety of
5 her home, which is why she didn't disclose and she
6 trusted him and why the relationship was able to
7 escalate.

8 There is a specific instance that occurs in
9 the bathroom, for example, in Queens County where they
10 were in the bathroom together. The defendant is making
11 comments about her breasts, making comments about her
12 body, picks her up, puts her on the sink and puts his
13 mouth on her vagina and begins performing oral sex on
14 her while her own mother is in the home.

15 We're not here to litigate those instances,
16 we're here to have the victim explain that it is this
17 type of behavior that put in her mind a fear to even
18 tell her mother what was going on because it was during
19 that type of abuse that the defendant said to her,
20 "Don't tell anybody. You have to be quiet. Nobody is
21 allowed to know about this."

22 It's very difficult --

23 THE COURT: Is that coupled with some overt,
24 or perhaps not overt, threat of force?

25 MS. JOHNSON: That particular instance was

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1 not a direct threat of force, but there were instances
2 in Queens where the defendant did threaten her with a
3 knife and threatened to cut her finger off.

4 That force that occurred that is part of a
5 charge in Queens is certainly relevant and probative to
6 establish the force elements that we have in these
7 charges because, we may cross county lines, but the
8 threat in her mind began in Queens and the threats of
9 him cutting her finger off began in Queens during other
10 sexual abuse.

11 As to the narrative aspects of how the abuse
12 took place, certainly it's relevant and probative to
13 explain how her relationship with the defendant
14 escalated, how he escalated the abuse, how it was that
15 he was able to progress the relationship from touching
16 to kissing, to touching under the clothes, to touching
17 with force.

18 That escalation is necessary for the jury to
19 explain that one day he just doesn't pick her up, drive
20 her to Nassau County and start touching her vagina.
21 That's not what happened here and we're unfortunately
22 in a position here -- and I believe it is unfortunate
23 that we are trying to case before the Queens case is
24 being tried and we're in a position where, because
25 we're trying this case first, it's even more important

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1 for the jury to understand what happened preceding what
2 happened in Nassau County.

3 THE COURT: Well, quite frankly, I think that
4 if you were trying -- the Queens case had already been
5 tried, obviously -- or the incidents here had predated
6 the Queens case, I don't think I would be entertaining
7 your application at this point.

8 MS. JOHNSON: If the Queens incidents
9 occurred after this case I agree with your Honor, it
10 might not be relevant and probative to her state of
11 mind because her state of mind wouldn't have had -- she
12 wouldn't have known about the force and she wouldn't
13 have known about the threats because it happened after.

14 THE COURT: Because obviously I'm thinking,
15 should I grant your application, that I have to
16 obviously limit the number of instances.

17 MS. JOHNSON: I agree with your Honor.

18 THE COURT: So what is it that you're
19 proposing?

20 MS. JOHNSON: We would ask that the victim be
21 able to testify as to when the abuse began, what type
22 of touching and what type of contact occurred in Queens
23 County, what type of threats and how the threats
24 occurred, under what circumstances.

25 Obviously, if I was to ask her on the witness

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1 stand, "When was the first -- how did the relationship
2 change," I would obviously prepare my witness not to
3 get up on the witness stand saying on this date and
4 this date this is how it began.

5 It would be a narrative of, "He began
6 touching me when I was 13 or 14 in my home and the
7 touching escalated to kissing, it escalated to under
8 the clothing."

9 And I would ask her, similar to how the
10 questions were sort of posed to her in the grand jury,
11 "And were you in fear of him," an element which I must
12 prove.

13 "Why was it that you were in fear of him?"

14 "Because he had threatened me before. And he
15 had threatened me before when he was touching me. He
16 threatened to cut my fingers during other instances
17 when he was touching me," that type of questioning,
18 your Honor, because that is how the background
19 information should come in and, obviously, as your
20 Honor has the ability to, which most of the cases
21 reference, the Court has the ability to fashion a
22 curative instruction to the jury as to how they are to
23 consider this evidence, be it as narrative, be it as
24 motive, be it as intent.

25 And we would agree with the Court that the

1 Court should fashion for the jury so that they do
2 understand why the information is being offered. I
3 would agree and I'm assuming Mr. Schechter would make
4 this argument, the Court has the ability to give the
5 curative to the jury, not only before the witness
6 testifies, but after she testifies and even during the
7 jury charge.

8 But we're in a situation here where, as an
9 element we must prove being force, the prosecution
10 should not be hampered because that force occurred
11 during other bad acts that are charged in another
12 indictment.

13 It is the very reason that it is probative,
14 because it occurred during other sexual abuse, during
15 other instances for which he's charged.

16 Your Honor, the Court had provided -- and I'm
17 going to get to the Leeson case in a moment, but also
18 with regard to prompt outcry and the timing of her
19 disclosure, I don't believe it's in question at this
20 point that the victim did not disclose the abuse for
21 several years. It began and it escalated and finally
22 at the point where the defendant had said to her that
23 she was going to be the one -- that he was going to
24 have sexual intercourse with her, that she decided to
25 run away from home.

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1 In People versus Archibald, which is a 2007
2 case I provided to the Court, that is a
3 First Department case, the court held that evidence of
4 prior sexual abuse is relevant to explain the timing of
5 the victim's reporting and why she waited more than a
6 year to report.

7 Here she not only waits to report because
8 she's in fear, but because there was a relationship of
9 trust and she was afraid to tell anybody what, not a
10 stranger, but what her own father was doing to her.

11 THE ATTORNEY: Objection, that's a
12 mischaracterization of the relationship.

13 MS. JOHNSON: Stepfather, that he's raised
14 her since three years old, which the defendant on the
15 video refers to her as his daughter anyway, but not
16 blood, a stepfather.

17 Here, where the abuse takes place over years
18 and the threats occur during other instances, that is
19 relevant to why she disclosed and when she disclosed
20 because certainly she's going to be able to testify
21 that she didn't outcry to her best friend, she didn't
22 outcry to her mother and she didn't feel safe outcrying
23 to either one of them for quite a long period of time.

24 THE COURT: Let me ask you, when does she --
25 when you talk about the allegation that the defendant

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1 claimed he wanted to be the one, is that -- in terms of
2 context, does that also happen when he allegedly says
3 to her, "We're going to have sexual intercourse on a
4 particular date?"

5 I mean, I may be incorrect in my knowledge,
6 but I thought that he had, according to your
7 allegations, picked a certain date that he was going to
8 have these -- have this sexual intercourse with her and
9 that's what prompted her to leave the house.

10 MS. JOHNSON: He did, Judge, he did. He gave
11 her a date and he gave her a specific date that they
12 were going to have intercourse and I believe days
13 before that was going to happen, or if not a day
14 before, that she packs her bags and runs away. But it
15 is that progression up to that point of where he
16 threatens that they're going to have intercourse that
17 all those acts occur in Queens County during other
18 instances of sexual abuse.

19 But, more importantly, even more so with the
20 element of force, as the jury charge reads, it is the
21 state of mind of the victim that controls.

22 It is not whether or not the defendant was
23 going to have sex with her or even really planned on
24 having sex with her, which we believe he was, but,
25 either way, People versus Thompson, which I've provided

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1 to the Court, outlines -- that's a Court of Appeals
2 case from 1988, outlines what it is that must be
3 established in order to establish this element of force
4 and as the court says, "Whether threats amount to
5 forcible compulsion or not is not what the defendant
6 would or could have done, but it is the victim
7 observing the defendant's conduct, fearing he would or
8 might -- " " -- what he might do if she did not comply
9 with his demands."

10 It is exactly that fear and exactly the
11 defendant's conduct that is relevant here and that
12 conduct occurred in Queens during other instances of
13 sexual abuse.

14 In fact, the court in Thompson says that
15 where the defendant is -- was more than twice the
16 victim's age and was in a position of power, this
17 evidence was even more so relevant and probative.

18 Here there is no question there was an
19 authority figure in possession of power. It was her
20 stepfather, somebody who has raised her since she's
21 three years old.

22 People versus Thompson also says that these
23 prior instances are relevant and probative to show what
24 the victim believes and what her fear was and what her
25 state of mind was at the time that she not only

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1 disclosed, but how it was that that fear escalated and
2 how that fear came to be.

3 People versus Sehn, a case I provided to the
4 court as well, very similar to the situation we have
5 here, your Honor, where the defendant and the victim --
6 defendant was a caregiver of the victim and an element
7 the People had to prove beyond a reasonable doubt was
8 forcible compulsion. The court says, this is a
9 Third Department case from 2002, "In this case it is
10 undisputed that the defendant was substantially older
11 and larger than the victims and they looked up to him
12 as an authority figure and a caregiver."

13 And it was because of that intimate
14 relationship that the court held that the state of mind
15 produced in the victim to establish the elements of
16 force was even more so relevant because of the nature
17 of the relationship between the parties.

18 THE COURT: Ms. Johnson, let me ask you, what
19 instance in Queens that you can make a good-faith
20 argument for with respect to an allegation of force are
21 you looking to put forward?

22 MS. JOHNSON: The defendant threatens to cut
23 her fingers off if she tells and while he's abusing
24 her.

25 THE COURT: All right, my law secretary has

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1 given me the grand jury minutes.

2 MS. JOHNSON: Which, the Queens or Nassau?

3 THE COURT: October -- Nassau, it appears.

4 MS. JOHNSON: Okay.

5 THE COURT: And it's on Page 24 of October
6 15th, 2008.

7 MS. JOHNSON: Your Honor, I'm going to just
8 ask the Court -- I have the Rosario being copied so I
9 don't have the minutes with me.

10 THE COURT: From looking at it here it
11 appears as though there's questions being asked of her
12 of times that she was threatened in Nassau County and
13 in that, in one of her responses, she talks about
14 having her -- that he was going to cut her finger off.

15 Now, that's Nassau County.

16 MS. JOHNSON: Yes.

17 THE COURT: So you're saying there's
18 something in Queens?

19 MS. JOHNSON: Yes, Judge, he had threatened
20 her in Queens as well. I do not have the grand jury
21 minutes from Queens County for your Honor, they're
22 being copied, but the force began in Queens, him
23 threatening to cut her fingers off, threatening to bury
24 her and tell her where she was going to be buried, that
25 all happens in Queens as an ongoing pattern of sexual

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1 abuse.

2 There are instances charged in this
3 indictment --

4 THE COURT: Let me ask you this.

5 How -- in terms of recency, how soon or how
6 close in time, should I say, is the incident that
7 you're looking to elicit in Queens to the incidents in
8 Nassau County?

9 MS. JOHNSON: You know what, I would have to
10 take a look -- are you talking about the specific
11 instance where he threatens to cut her fingers off?

12 THE COURT: I'm talking about whatever
13 incident of force that you alleged has occurred in
14 Queens County that you're looking to elicit as part of
15 your Molineaux application.

16 MS. JOHNSON: Well, there is force in the
17 expressed threat, your Honor, and there's force in the
18 coercive aspect.

19 The force in the coercive aspect is the times
20 where he tells her, "Do not tell anybody. Let's keep
21 this a secret," and he tells her to shh (ph), in those
22 exact words, and what that's what her testimony in
23 Queens is.

24 The incidents of actual force, physical force
25 with the threat of cutting her finger, occurs, I

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1 believe, a year before. It's at least while she's in
2 high school and it occurs, I believe, in their kitchen
3 in their home in Queens.

4 But what --

5 THE COURT: A year before the incident in
6 Nassau County?

7 MS. JOHNSON: I would have to take a look at
8 the grand jury minutes, your Honor. I'm sorry, I don't
9 have them, I have them being copied, the Queens County
10 grand jury minutes, because I specifically --

11 THE COURT: I mean -- off the record.

12 (Discussion held off the record.)

13 THE COURT: Back on the record.

14 MS. JOHNSON: But with regards to the force,
15 it's not just -- and when you read the charge of force
16 it's not just the expressed threat it's also the
17 implied threat and an implied threat is not something
18 that just happens on a one-time event.

19 An implied threat is the progression of him
20 telling her, "Do not tell anybody. Do not tell your
21 mother. Do not tell anybody what's going on."

22 In fact, the defendant admits it himself on
23 the video that he told her not to tell anybody and he
24 says he did it in private so nobody would see.

25 I think it's even more relevant in this case,

1 Judge, because none of the crimes charged in the
2 indictment of statutory, none of them have to do with
3 age.

4 Every single crime, every single charge in
5 the indictment requires us to prove that element of
6 forcible compulsion.

7 It would hamper the People and it would
8 hamper the prosecution and misguide the jury to believe
9 that the force just occurred in Nassau on these
10 particular dates. They need to be made to understand
11 that this force, both expressed and implied that was in
12 her mind in Nassau, occurred during particular
13 instances of abuse in Queens.

14 THE COURT: Well, in the counts of the
15 indictment in this case is it a question of express
16 force that you've alleged?

17 MS. JOHNSON: In certain instances there was
18 express force with the weapon. In other instances it
19 was the implied force, which is why she testifies in
20 the grand jury that he had threatened her before and
21 that fear continued during the abuse in Nassau County.

22 It is not during each instance and the way
23 the indictment is charged, there's particular dates and
24 there's time frames.

25 More importantly, during those time frames we

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1 are not alleging that on each date he threatened her
2 with a knife.

3 What we are alleging and what we have pled is
4 that during those time frames where she admits that
5 there wasn't always a knife and he didn't always
6 threaten her with a knife, it was her mind and her fear
7 that had begun in Queens that was the force that she
8 felt and the threat that she felt in Nassau during the
9 periods of the abuse.

10 THE COURT: And your example of implied force
11 that occurred in Queens was allegations that he told
12 her don't tell anybody?

13 MS. JOHNSON: Even more than that, when he
14 threatens to cut her --

15 THE COURT: That's express, I would say,
16 threat of force, would you agree?

17 MS. JOHNSON: I would agree with that, Judge.

18 But as to the implied, I believe that it's
19 implied in the nature of their relationship. When a
20 father tells his daughter during a course of abuse,
21 course of sexual abuse, not to tell anybody and that
22 he's going to either bury her or show her where he's
23 (sic) buried or this is their secret, that is certainly
24 implied force, based on not only what he says and
25 implies to her, but based on their relationship.

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1 Even the fact that he tells her that she is
2 going to be the one and he wants to take the
3 relationship further, that, I would submit to the
4 Court, is also implied force and implied coercion
5 because it is an authority figure in a position of
6 power that's saying this to her.

7 THE COURT: All right, anything else you want
8 to tell me?

9 MS. JOHNSON: There was two other cases I
10 handed to the Court, People versus Chaffee and
11 People versus Cooke.

12 Your Honor, in anticipation of what the
13 defense is going to be, I would venture to guess it's
14 going to be one of two things; it either didn't happen
15 and, if it did, it was consensual. I can't, in my
16 mind, think of another avenue that they would go, but
17 I'm obviously not -- that's my best guess.

18 People versus Chaffee and People versus
19 Cooke, the court held that prior convictions for
20 sexually abusing the same very victim, admissibility of
21 that, outweighed any prejudice, particularly when the
22 defense was that it never occurred or the allegation is
23 a lie.

24 Here, where we anticipate that one of those
25 two things is going to be the defense, certainly it

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1 would be admissible.

2 Your Honor, we seek to admit this evidence on
3 our direct case both through her testimony and through
4 the video, through the defendant's own statements on
5 the video.

6 I don't know if the Court wants to address
7 the issue of the video now because we haven't heard
8 your Honor's decision on the hearing, but one factor
9 that the Court, I believe, needs to consider is that
10 assuming your Honor allows the video to come into
11 evidence, we would argue to your Honor that the
12 entirety of the video would be admissible to show his
13 motive, to show his intent, not just from her mouth,
14 but it's certainly relevant and probative out of his
15 own mouth.

16 And one of the things that -- one of the
17 burdens that the People have is to prove the
18 voluntariness of a confession to the jury, to the fact
19 finder, beyond a reasonable doubt.

20 The entirety of that video, we submit to the
21 Court, shows the voluntariness of his statement. It
22 would certainly hamper the People, and I believe it
23 would be patently unfair, for the Court to allow part
24 of a video to come in whereas the totality of the video
25 is what the jury must look at to determine the

1 voluntariness of his statements. They can see him with
2 his own eyes (sic) and determine for themselves that he
3 wasn't coerced, an issue that the jury has to consider
4 on their own.

5 So --

6 THE COURT: For all those reasons.

7 MS. JOHNSON: -- in sum, Judge, we would
8 submit that both the victim's testimony and the video
9 are admissible under Molineaux to show not only his
10 motive, his intent, but it's absolutely necessary
11 background material, it is imperative to the issue of
12 force that we have to prove beyond a reasonable doubt
13 and this jury must be made to understand that these
14 actions did not occur in a vacuum, there was a grooming
15 process going on here, there was additional abuse that
16 caused her the fear and it goes directly to her
17 credibility because it goes directly to why she
18 outcried, who she outcried to and what her state of
19 mind was.

20 THE COURT: Mr. Schechter?

21 THE ATTORNEY: May it please the Court, your
22 Honor, I think that counsel has, in fact, put the cart
23 before the horse simply because all of her Molineaux
24 application relates to what the cases have showed from
25 the last hundred years or 80 years since Molineaux has

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1 been decided and that is prior uncharged crimes.

2 My client is currently being charged in
3 Queens County with not only forcible crimes, but
4 statutory crimes against the same victim.

5 As such, your Honor, the cases hold -- and I
6 cited Bennett and Betts in my motion in limine. The
7 cases hold that you cannot place an accused person in
8 the position of having to make a Hobson's choice.

9 In the event this material comes into
10 evidence, he's in the impossible position of having to
11 decide, "If I testify to defend myself of what I'm
12 being accused of her, including the things I'm being
13 accused of in Queens, then I'm going to be
14 incriminating myself in Queens County."

15 "However, if I do not testify, then the
16 allegations of the complainant regarding what happened
17 in Queens County go unchallenged and go unexplained,"
18 and therefore I am hamstrung and he is hamstrung
19 because he can't -- there's no way to make a decision
20 here. It's between whether you're going to get eaten
21 by a tiger eaten by a lion and the law protects him
22 from that. That's why Molineaux is restricted to prior
23 uncharged crimes.

24 So everything counsel said, and I'm going to
25 get to the applicability of Molineaux in a second, is

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1 completely in opposite because the defendant's right to
2 be protected against self-incrimination outweighs the
3 desire of the People to basically show propensity
4 evidence.

5 What they're trying to do, they make all
6 these nice pronouncements; a limiting instruction could
7 be made from the Court to the jury.

8 Your Honor, and I have been around a long
9 time, you cannot get a jury to ignore, "I've been
10 abused for four years. I've been -- he's taken his
11 mouth on me and by force. He threatened me with this
12 in Queens. He did this in the house in front of the
13 kids. He did this -- " how are you going to ask a jury
14 to disregard the nitty-gritty of those statements, only
15 to be utilized to determine his intent here?

16 My client made a confession and on the
17 confession - which we haven't gotten a determination
18 yet, but assuming, arguendo, that the Court grants the
19 People the right that that confession is admissible -
20 my client made statements on that tape concerning these
21 instances and Queens, they overlap, although he did on
22 one instance say, "400 Community Drive we did this,"
23 and so on and so forth, denied the force.

24 However, the People have represented that the
25 complainant is going to testify that in Nassau County

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1 force was utilized. They went out of their way to get
2 this knife, supposedly that was in the car. They
3 allege that he said, "I'm going to bury you here,"
4 whatever, that these threats were made, they were in
5 her head.

6 The fact is, he is being charged in
7 Queens County with violent and statutory crimes.

8 How can I, as his lawyer, put him on the
9 witness stand and incriminate him in a case for which
10 he stands to get 25 years consecutively with this?

11 How is he going to defend himself?

12 THE COURT: Let me ask you this.

13 Who says or why do you pose it as though he
14 has to defend himself from those Queens charges in this
15 case?

16 MR. SCHECHTER: Because if the People --

17 THE COURT: That's a decision that you and
18 him --

19 MR. SCHECHTER: No, your Honor, with all due
20 respect --

21 THE COURT: No, it's a decision,
22 Mr. Schechter, that you and him will have to make.

23 Obviously, if I allow the People to introduce
24 this evidence in their direct case and should your
25 client testify, I'm certainly not going to allow the

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1 People to cross-examine your client with regard to the
2 Queens incidents unless he makes a choice that he's
3 going to refute those charges here. This jury is not
4 going to be considering whether he's guilty or not
5 guilty of the Queens charges.

6 MR SCHECHTER: With all due respect, your
7 Honor, it renders the proscriptions of Bennett and
8 Betts moot.

9 THE COURT: Well, let's get to that because
10 I'm glad you bring that up.

11 If you take a look, Mr. Schechter, and I have
12 looked at these cases, one thing that you'll notice
13 that with respect to the decisions both in Bennett and
14 Betts, in the context of how the Court of Appeals ruled
15 in those cases, it deals with the proscription of
16 cross-examining a defendant regarding pending charges
17 for credibility purposes only.

18 In other words, it comes up in the context of
19 a Sandoval ruling, would you agree?

20 MR SCHECHTER: Yes.

21 THE COURT: As opposed to a Molineaux ruling.

22 MR SCHECHTER: They touch on that, but please
23 proceed, your Honor.

24 THE COURT: Now, if you see in the case that
25 came out just this week, and I gave it to both counsel

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1 a day or two ago, People versus Leeson, it's clear that
2 in these types of cases - and when I say these types of
3 cases, cases involving allegations of sexual
4 misconduct - particularly as here where it relates to
5 the same complainant and the same defendant, the
6 Court of Appeals has said that so long as the evidence
7 is not for propensity purposes, that the prior bad acts
8 will be admissible for purposes that bear -- for
9 purposes that are material to the issues that a jury is
10 going to consider.

11 So obviously the Court of Appeals is saying
12 that even these prior bad acts is admissible on the
13 People's direct case, so long as it's not for
14 propensity purposes.

15 My question to you is how, then, do you
16 reconcile the fact that the Court of Appeals is saying
17 this type of evidence is admissible with the Betts and
18 the Bennett cases?

19 Because in the Betts and Bennett cases it
20 talks about, unless I'm misreading the cases, where a
21 DA is looking to cross-examine the defendant regarding
22 pending criminal charges for credibility purposes as
23 opposed to Molineaux issues.

24 So, while the Betts and Bennett cases are
25 instructive with regard to some of the things that you

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1 bring up, there is, in my view, a rather significant
2 distinction in the way those cases are decided as
3 opposed to what we're dealing with here.

4 MR SCHECHTER: I respectfully take --
5 disagree with the Court in this sense.

6 The court dealt with the uncharged crimes in
7 those two cases with respect to cross-examination of a
8 defendant on the witness stand in order to prevent him,
9 basically, from incriminating himself.

10 The same issue goes -- relates in this case
11 under a Molineaux theory because it would take all of
12 the steam and protections out of that ruling to permit
13 the District Attorney to go backdoor here and offer on
14 her direct case evidence of those crimes.

15 We would be, then, in a position to have to
16 defend those crimes here as well as Queens County, your
17 Honor, because the jury, and with all due respect, no
18 matter what limiting instruction the Court gives, no
19 matter what the Court says, this jury is going to then
20 be shown by the District Attorney, through the
21 testimony of the complaining witness and through this
22 admission, that the complaining witness has been -- my
23 client is being charged, rather, with crimes in
24 Queens County for which he's indicted, crimes for which
25 he is not charged here and I respectfully submit it's a

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1 68 count indictment in Queens County, there's no other
2 reasonable view of this evidence other than the
3 People's desire to show propensity here.

4 The defendant would then have to take the
5 witness stand or elect not to take the witness stand
6 because he then has to face B felonies in
7 Queens County, he takes the witness stand regardless of
8 any desire to -- or limitation of the Court's --
9 limiting the People to cross-examining my client, the
10 other material comes in. It's going to come in
11 regardless.

12 So whether he takes the stand here or doesn't
13 take the stand here, he either incriminates himself in
14 Queens County or he's going to incriminate himself in
15 this case and it just makes no sense, Judge.

16 THE COURT: Your concern, and that's what the
17 concern of the Court of Appeals was in the Betts and
18 Bennett cases, is a defendant waiving his
19 self-incrimination rights regarding a pending criminal
20 charge and, again, and it bears repeating, that in that
21 particular case the People were looking to
22 cross-examine the defendant regarding pending charges
23 in another county for credibility purposes.

24 I can assure you, and that's what your
25 concern is, that your client, by testifying here in

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1 this case, is going to be giving up or foregoing his
2 Fifth Amendment right to not testify with regard to the
3 Queens charges, but I say to you that the only way that
4 that would happen would be if he decided to testify in
5 this case regarding the criminal charges or the acts
6 that are pending in Queens because certainly I'm not
7 going to allow the People to cross-examine him about
8 those Queens instances, should he take the stand here,
9 unless, again, unless he brings -- he opens the door,
10 if you will, as we all know, to that.

11 MR SCHECHTER: Your Honor, hypothetically --

12 THE COURT: And I think that protects your
13 client's Fifth Amendment rights with regard to the
14 Queens case and it preserves his right to refute, if
15 you will, the charges that this jury is going to
16 consider here.

17 MR SCHECHTER: With all due respect, it does
18 not, your Honor, because.

19 THE COURT: How does it not?

20 MR SCHECHTER: Because if he's not going to
21 be cross-examined, if he's not going to be examined
22 about the cases in Queens County, then the jury is
23 going to hear the complainant's testimony
24 uncontradicted, he will be then -- they will assume he
25 will have to, if he's on the witness stand, refute

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1 those charges, because if he doesn't refute the charges
2 they're going to absolutely draw an inference that he
3 must be guilty of those charges and we're going to be
4 in the same position.

5 It's a backdoor desire by the prosecution to
6 get un -- inadmissible, rather, evidence before this
7 jury which is in the nature of proclivity evidence,
8 that he is predisposed to commit this crime.

9 THE COURT: That's a different argument in
10 itself. That's an argument against a Molineaux
11 application.

12 MR SCHECHTER: But what I'm saying is,
13 they're related.

14 Utilizing this vehicle to get this evidence
15 before this jury is a backdoor way of violating Betts
16 and Bennett. That's what they're trying to do.

17 The fact that Betts and Bennett spoke of
18 cross-examination of a defendant taking the witness
19 stand does not, in any way, limit the prejudice to my
20 client in the event this material comes in because then
21 he's faced with this -- still going to be faced with
22 this obstacle and he has to make a decision, "Do I get
23 on that witness stand and risk incriminating myself in
24 Queens or do I keep quiet and risk that the jury hears
25 this material and it's unrefuted?"

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1 That is not a choice, I respectfully submit,
2 that the Court of Appeals says a defendant should make.

3 I would also like to quote from some of the
4 cases that counsel has, in fact, cited.

5 And the Molineaux issue, obviously, overlaps
6 to some degree, Judge.

7 Firstly, your Honor, she cites - when I say
8 she I mean Ms. Johnson - People v. Alvino. It's the
9 first case that she cites here.

10 Now, on Page 17 in the dissent, which also
11 reiterates some of the theory that the majority
12 utilized, the dissent says, that's Page 17, the second
13 paragraph on the left two-thirds down the page, "The
14 suggestion that evidence could not be received to show
15 that the same man picked the pocket of the same person
16 on several successive occasions here together does not
17 apply to this case," meaning this particular case, "but
18 implicit is the fact that the court does not permit
19 this kind of inquiry," and they justify it by saying
20 the pickpocket knows when he steals, there could be no
21 mistake about it, whereas here there could have been a
22 mistake. There's no allegation of a mistake.

23 How is it going to be a mistake?

24 Is there a mistake whether you sexually
25 abused another person?

1 No, either you did or didn't, period.

2 Now, that's one.

3 She also cites People versus Marji.

4 There is nothing here with respect to the
5 relationship. The relationship is conceded. They know
6 about the relationship. She says she wants to show a
7 relationship between the two of them. That's already
8 conceded. He concedes it in his statement and she's
9 going to testify to that.

10 The only real difference is was forced used,
11 assuming that statement comes in, and I'm going to ask,
12 again, that be limited as part of my application.

13 She also cites People v. Jackson as she
14 indicated before.

15 Jackson again says in a rape prosecution
16 evidence of a prior uncharged sexual assault,
17 uncharged, Judge.

18 And the court says in that case, "The
19 uncharged rape in itself was inadmissible under
20 People v. Molineaux, but I conclude that the trial
21 court had discretion to admit evidence of the rape to
22 give meaning to the statement."

23 The statement was made, basically, in the
24 course of the current rape. When he was raping her he
25 says, "Well, I did this, this and the other thing."

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1 Yeah, that's a res gestae statement. That's
2 completely different.

3 So the statements -- the cases that counsel
4 is citing in support of her Molineaux application are
5 in apposite, Judge.

6 Here the most important right is my client's
7 right against self-incrimination.

8 They have a witness that's going to testify
9 as to the specifics of the sexual abuse. The Court has
10 already been given a brief photocopy from counsel's
11 statements of how she intends to prove the force
12 occurred.

13 There is no reason whatsoever, short of
14 trying to show propensity, for counsel to be able to
15 elicit information concerning charged -- a charged
16 indictment in Queens County, even with the same
17 complainant.

18 I believe that the courts over this century
19 have purposefully stayed away from that red elephant in
20 the room and that is charged crimes because they were
21 jealously (sic) trying to protect defendant's right
22 against self-incrimination.

23 And to permit the People to go into these
24 charged crimes in Queens puts him in the situation
25 where he's unable to defend himself.

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1 I respectfully submit it violates due
2 process, it violates equal protection, it violates the
3 law.

4 THE COURT: Let me propose this to you,
5 Mr. Schechter.

6 What if I am of the opinion that the words
7 charged or the fact that your client is facing charges
8 in Queens is not brought out in front of this jury, but
9 rather the underlying acts for which form the basis of
10 the charges because, quite frankly, I'm not going to
11 allow the People in this case to talk about a pending
12 Queens indictment with regard to your client --

13 MR SCHECHTER: It's not only --

14 THE COURT: -- does that mollify your
15 concern?

16 MR SCHECHTER: No, because it's not only that
17 the jury will hear that he's charged in another body, a
18 grand jury indicted him, whoops, for a crime. That's
19 not the real prejudice here.

20 The prejudice here is due process; that
21 these, are, in fact, in fact, charges he's facing in
22 Queens County and the decision -- the determination
23 will have to be made by him to either incriminate
24 himself in Queens County or to try to ameliorate the
25 prejudice that the People have caused by these alleged

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1 prior acts being introduced.

2 That prejudice, that issue, will never go
3 away, Judge.

4 THE COURT: I'm listening to you.

5 MR SCHECHTER: Additionally, your Honor, with
6 respect to the statement, the statement itself contains
7 overlaps, contains sexual acts that were alleged to
8 have occurred in Queens.

9 So the statement itself would also have to be
10 redacted to some degree so that prejudice doesn't
11 eventuate to here.

12 The People knew when they charged my client
13 in Nassau County -- they knew he had been indicted
14 Queens. They knew that he was charged in Queens
15 because some of the same because some of the same acts
16 he's charged with here. They knew that.

17 As such, they elected to bring this
18 prosecution. They cannot be permitted a benefit from
19 trying to get two shots at him for the same acts,
20 Judge, and that's what they're trying to do.

21 THE COURT: All right, it would appear to
22 this Court that the -- and, again, as recently as this
23 week the Court of Appeals has indicated that in these
24 types of cases, specifically when it deals with courses
25 of conduct or periods of time when there's allegations

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1 of sexual misconduct between the same complainant and
2 the same defendant and as recently as in the Leeson
3 case that came out this week similar to the situation
4 here in this case, the Court of Appeals there
5 essentially said that prior bad acts, if you will, in
6 an adjoining county, not the county for which the
7 defendant was on trial for, were admissible in that
8 particular case since it had a bearing on the nature of
9 the -- and background, if you will, the relationship
10 between the complainant and the defendant and placed,
11 and I'm quoting from the Leeson case, "placed the
12 charged conduct in context."

13 Obviously, these decisions are decisions of
14 discretion as far as the trial court is concerned.

15 MR SCHECHTER: May I please interrupt the
16 Court for a second?

17 THE COURT: Yes.

18 MR SCHECHTER: I think the determination is
19 one of law with respect to Molineaux. I think the
20 courts held that it's a question of law and not fact or
21 discretion.

22 The other thing is, because I don't think I
23 fully addressed ed the Molineaux issue and I would like
24 to do that so the record is complete, I do not believe
25 based on the proffers of Ms. Johnson that she has

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1 demonstrated sufficient, under Molineaux, to offer on
2 direct examination or through other -- direct testimony
3 or through any other evidence, including videotape,
4 that the prejudice that will be -- that will result
5 from the introduction of this material would outweigh
6 its probative value.

7 I further don't think that she came in under
8 any of the exceptions listed under Molineaux, mistake,
9 intent -- there's no mistake.

10 Intent is a question of fact for the jury
11 that the complainant will testify to and that's
12 something that will be resolved by them after they hear
13 the evidence.

14 Mistake, identity, is not an issue and common
15 plan and scheme is not an issue because this is not a
16 larceny crime or some kind of guesswork puzzle.

17 There's only one real issue, did he forcefully
18 have sex with her, that's the issue.

19 As such, it's not rocket science and the only
20 purpose for her doing this is for propensity purposes,
21 Judge.

22 So she has failed, I respectfully submit, to
23 come in with any exceptions to Molineaux.

24 Additionally, the prejudice will outweigh its
25 probative value and for those reasons, in addition, I

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1 respectfully ask the Court deny the application, both
2 because of my client's violation of his right against
3 self-incrimination, due process, and because Molineaux
4 has not fully been complied with.

5 THE COURT: As I was saying, the Court of
6 Appeals, on this particular issue, has directed trial
7 courts, in its discretion, to balance the probative
8 value of these uncharged or charged acts as to whether
9 or not their probative value outweighs any prejudicial
10 effect.

11 And, as you indicated, Mr. Schechter, there
12 are certain enumerated areas for which the court has
13 indicated that these items of uncharged prior acts or
14 criminal acts, bad acts, if you will, may be relevant
15 in a particular prosecution.

16 And, as I was indicating to you a moment ago,
17 in this particular type of setting what the -- not only
18 the Court of Appeals, but certainly many cases out of
19 the Second Department involving either sexual
20 allegation -- allegations of sexual conduct between the
21 same defendant -- between the same complainant and
22 defendant and it's certainly been seen in domestic
23 violence cases as well, that in terms of the
24 admissibility of these particular prior uncharged
25 criminal acts, one of the areas that the courts,

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1 including the Leeson Court of Appeals case, indicated
2 is that such evidence can be relevant to provide
3 necessary background information on the nature of the
4 relationship and I think for that reason, perhaps more
5 than any other, I think some of the incidents in Queens
6 are relevant.

7 I would agree that they're not relevant for
8 purposes or for absence of mistake, I would agree with
9 you with respect to that, but I certainly think they
10 are relevant with respect to explaining the nature of
11 the relationship between the defendant and the
12 complainant, the background of the relationship.

13 It certainly appears, as well, to have some
14 bearing on intent, particularly as it deals with the
15 issue of the element of force that's charged in this
16 particular case.

17 Insofar as your argument that your client's
18 Fifth Amendment or self-incrimination rights would be
19 compromised, as I indicated to you during the course of
20 our discussion, that only becomes an issue if -- should
21 he take the stand and discuss and, if you will, open
22 the door to those Queens acts.

23 It's certainly my intention not to allow the
24 DA to cross-examine, for example, for credibility
25 purposes, on the pending criminal acts, certainly that

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1 would be precluded by the Betts and Bennett cases that
2 you've given.

3 But, again, the Betts and Bennett cases deal
4 with an issue that was posed in terms of a Sandoval
5 application and, again, as I indicated, the Court of
6 Appeals has quite clearly said that this type of
7 evidence in these circumstances, provided that if it's
8 not unduly prejudicial, can be admissible and is
9 relevant and for that reason, for those reasons, I
10 should say, I'm going to grant the People's application
11 to this extent.

12 First and foremost, I'm going to direct the
13 People not to elicit anything from any of the -- from
14 the complainant or, for that matter, any of their
15 witnesses regarding any pending Queens charges or the
16 reference to a Queens indictment, number one.

17 Number two, I am going to allow them to
18 elicit from the complainant when this -- the nature of
19 this, if you will, sexual relationship began with the
20 defendant.

21 I am going to elicit -- allow the People to
22 elicit when the, in terms of an instance, if you will,
23 when the complain -- when the relationship went from
24 what appeared to sound as though -- with the absence of
25 force to the use of force by the defendant.

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1 And I will allow the People to elicit
2 testimony with respect to the alleged statement by the
3 defendant that he wanted to be the one, and I'm
4 assuming that this is what the testimony will be, that
5 there was some indication by the defendant that he
6 wanted -- or he picked, chose, if you will, a certain
7 date that he was to have sexual intercourse with the
8 complainant.

9 I see no reason to make any redactions from
10 the defendant's written statements -- well, let me take
11 that back.

12 I haven't made a ruling with respect to both
13 the written and the videotaped statement. Should I
14 allow those items to be introduced by the People, I
15 would not -- I would not redact any portions of either
16 the written or the videotaped statement. I think that
17 insofar as particularly the videotaped statement is
18 concerned, I think that my ruling with respect to what
19 the People will be allowed to elicit is consistent with
20 what the defendant is alleged to say on the -- on that
21 videotaped statement.

22 And I think that, quite frankly, in those
23 limited circumstances I think that this evidence would
24 be admissible. I don't think that its probative value
25 is outweighed by any prejudice.

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1 MS. JOHNSON: May I ask the Court a question?

2 THE COURT: Yes.

3 MS. JOHNSON: With regards to the Court's
4 ruling about admitting -- allowing the People to elicit
5 testimony regarding when the sexual relationship began,
6 is the Court allowing the People to elicit testimony
7 regarding the time or is it the circumstance?

8 THE COURT: I would indicate the time and
9 circumstance and, as I indicated, when the relationship
10 changed from an unforced, if you will, relationship to
11 one of force.

12 MS. JOHNSON: And that also includes the time
13 and the circumstance?

14 THE COURT: Time and circumstance, a
15 circumstance.

16 MS. JOHNSON: The particular circumstance.

17 THE COURT: Yes.

18 MS. JOHNSON: And with regards to when the
19 defendant indicates he wants to be the one, is the
20 Court saying the victim would be able to testify that
21 it occurred during a period of sexual abuse, without
22 specific instance of it, but during sexual abuse that
23 that statement was uttered?

24 THE COURT: Yes. And I think that critically
25 in this case, most of these allegations are obviously

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1 intertwined with each other, both what occurred in
2 Queens and Nassau, and obviously the instances that I
3 am allowing all, if you will, lead up to the instances
4 in Queens -- instances in Nassau, I should say, right
5 up until the time the defendant is arrested.

6 So that's my ruling with respect to the
7 Molineaux application.

8 People, have you -- I assume, Mr. Schechter,
9 you're excepting to my ruling.

10 MR SCHECHTER: I do except to each and every
11 aspect of your Honor's ruling and I don't believe your
12 Honor addressed the due process argument I made
13 concerning -- that the District Attorney is not
14 permitted to go into charged acts by virtue of
15 violating my client's due process and violation against
16 self-incrimination.

17 THE COURT: I thought I had, but if I didn't,
18 just so both of you are clear, the People are not
19 permitted to cross-examine the defendant with regard to
20 the pending Queens charges, should he testify, unless
21 he opens the door to that and I will assiduously
22 protect, Mr. Schechter, your client's Fifth Amendment
23 rights with regard to that Queens matter, but bear in
24 mind I can only do so to the extent that your client
25 himself does not open the door, if you will, and

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1 testify to these Queens matters.

2 MR SCHECHTER: Your Honor, the Queens matters
3 would already have been coming into evidence so he
4 would have no choice but to testify to the Queens
5 matters because the People are going to be bringing
6 them in and that's the very nature of my argument
7 against self-incrimination and due process.

8 So if he testifies and will be opening the
9 door if he goes into what's already been offered, it's
10 academic.

11 THE COURT: His Fifth Amendment rights are
12 protected insofar as the Queens case is concerned,
13 provided that he doesn't himself, as a witness -- he
14 can't, to be -- I don't want to be simplistic about it,
15 but it is somewhat of a two-way street; if he doesn't
16 open the door to that obviously his Fifth Amendment
17 rights are protected.

18 This jury is not going to be considering
19 those Queens matters, they're not going to be hearing
20 about a Queens indictment or Queens charges, so this
21 jury, obviously, is not concerned about the matters in
22 Queens and certainly if he doesn't testify to the
23 matters in Queens then his Fifth Amendment rights with
24 respect to those charges are protected.

25 MR SCHECHTER: May I ask a hypothetical

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1 question to the Court?

2 Let's say the complainant gets on the witness
3 stand and testifies contrary to the way she testified
4 in Queens County. Of necessity and in order to
5 authenticate the inconsistency I would have to refer to
6 the grand jury minutes in Queens County.

7 As such, how now am I going to do that
8 without letting the cat out of the bag, basically
9 prejudicing my client because in order to defend him I
10 have to go into the Queens matters?

11 THE COURT: Well, one might say to the
12 complainant, "Do you remember testifying at a prior
13 proceeding on this particular day? And did you -- were
14 you asked this question and did you give this answer?"

15 MR SCHECHTER: Let's proceed.

16 "I don't recall. What proceeding? I don't
17 recall that. Oh, and that was when it was in Queens?

18 I mean, that's the problem with these kinds
19 of things, Judge. That's my concern. It can come out
20 even indirectly from the complaining witness.

21 THE COURT: The only thing I can tell you,
22 Mr. Schechter, and, believe me, I can appreciate your
23 position, I will do my best to preserve your client's
24 Fifth Amendment rights to the extent that I can and,
25 again, as I said, it would appear that based upon the

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1 case law that's in its current state, that this
2 evidence is admissible and I will do my best to make
3 sure that your client's right, not only in this trial
4 but with respect to any future rights he may have in
5 Queens are protected.

6 MS. JOHNSON: And, your Honor, I've never
7 tried a full case before the Court, but I will give the
8 Court my representation that during preparation of
9 testimony with the victim and with any other witnesses
10 that testified in the grand jury I will make it very
11 clear to them that in no uncertain terms are they to
12 mention any of this information and to be very
13 conscious of the fact that if testimony comes up about
14 what they testified to in Queens, that they are not to
15 make reference to it at the peril of their own trial,
16 your Honor, and this is important to everybody,
17 including the victim, and she is a smart intelligent
18 girl, your Honor. I truly believe that my cautionary
19 warnings to her and to the other victims (sic) will be
20 certainly honored before the jury -- witnesses.

21 THE COURT: I would hope that that's the case
22 but certainly there's been many, many, many an instance
23 where, notwithstanding the best of intentions, things
24 sometimes happen.

25 MS. JOHNSON: Absolutely.

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1 MR SCHECHTER: Please let the record reflect
2 that I have an exception to the -- to your Honor's
3 entire ruling.

4 THE COURT: People, it would be -- I would
5 love to hear that this logbook has managed to make its
6 way to your office. I've asked my law secretary to
7 call your office.

8 MS. JOHNSON: Okay.

9 Can I make a call?

10 THE COURT: Yes.

11 MS. JOHNSON: I'm assuming she was
12 unsuccessful?

13 THE COURT: I haven't heard from her.

14 (Brief recess in the proceedings.)

15 MS. JOHNSON: I would like the record to be
16 complete, your Honor.

17 THE COURT: Yes.

18 MS. JOHNSON: Can I see that first?

19 Can I just see it?

20 MR SCHECHTER: Sure.

21 (Shown to counsel.)

22 MR SCHECHTER: Based upon my review of the
23 log that we requested from the police, which does
24 contain the entries from midnight through the time my
25 client is allegedly placed under arrest, there's

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1 material -- I don't see any material that would be
2 useful for cross-examination on the -- of the officers.

3 THE COURT: Anything you want to add to your
4 argument in light of that, that you haven't made?

5 MR SCHECHTER: No.

6 THE COURT: One -- just before we get to the
7 decision after hearing, one thing, Mr. Schechter, I
8 neglected to add.

9 Obviously, with respect to any of this
10 Molineaux evidence, it would be my intent to give a
11 curative instruction to the jury, both before, after
12 and during my closing remarks, during my charge.

13 If there's anything you want me to consider
14 in terms of that charge, by all means, please give it
15 to us well enough in advance that I can review it with
16 my law secretary and obviously I trust you will give a
17 copy to the DA.

18 MR SCHECHTER: Well, I should like to say
19 parenthetically, your Honor, in my view there could be
20 no curative charge that would overcome the immense
21 prejudice that would result from the jury hearing about
22 all of these prior instances that have no relation to
23 this whatsoever, as I indicated before, so I don't
24 believe there can be any curative instruction that
25 would overcome that prejudice.

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1 THE COURT: All right.

2 And I take it by that you're not asking for
3 one?

4 MR SCHECHTER: No.

5 THE COURT: If you change your mind,
6 obviously, please do so before the complainant should
7 testify.

8 MR. SCHECHTER: With that in mind, I call
9 for all Rosario material concerning the complainant's
10 testimony in Queens County.

11 THE COURT: I see Ms. Johnson shaking her
12 head in the affirmative.

13 MS. JOHNSON: Yes, Judge, I would have turned
14 over her grand jury minutes anyway.

15 Actually, hopefully to expedite things for
16 Mr. Schechter to have the Rosario by tomorrow, it's
17 being photocopied as we speak by my parallel.

18 And any handwritten notes between the
19 prosecutor in Queens and the victim, I had requested
20 everything, so I don't believe that there's anything
21 from the Queens case that he wouldn't have as Rosario
22 in this matter.

23 MR SCHECHTER: Additionally, I neglected,
24 unfortunately, to ask this, did Officer Alfaro testify
25 in the grand jury, either in Queens County or in

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1 Nassau County?

2 MS. JOHNSON: She did not in Nassau.

3 I have already obtained copies of all the
4 witnesses' grand jury testimony in Queens, including
5 Officer Alfaro. That's being copied as we speak.

6 MR SCHECHTER: I did not have
7 officer Alfaro's grand jury testimony when she
8 testified. I will examine it to see if there's any
9 material that I find pertinent and if that's the case I
10 will seek permission from the Court.

11 THE COURT: It seems as though the beat goes
12 on.

13 Anything else we need to take up?

14 MS. JOHNSON: Just scheduling.

15 THE COURT: We will deal with that later.
16 Can I have the exhibits from the hearing?

17 MS. JOHNSON: Sure.

18 MR SCHECHTER: Mine, too?

19 THE COURT: Yes.

20 MS. JOHNSON: Do you want the video?

21 THE COURT: No.

22 MS. JOHNSON: Your Honor, can I keep a copy
23 of that logbook so I have it for the file and I'll give
24 Mr. Schechter a copy this afternoon?

25 THE COURT: Yes.

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1 (Shown to counsel.)

2 MS. JOHNSON: Your Honor, when we do discuss
3 scheduling I will have so-ordered subpoenas for your
4 Honor, if the Court would assist the People for
5 witnesses for trial?

6 MR SCHECHTER: Would the Court check to see
7 if it has the photographs?

8 Because I looked in the file where I normally
9 keep them and the photographs I have here, which are
10 basically duplicative, I don't see, as well as the
11 medical record.

12 MS. JOHNSON: I'll double check my file, but
13 I know I don't have them.

14 MR SCHECHTER: No, wait, here it is, I have
15 the medical record.

16 (Pause in the proceedings.)

17 THE COURT: All right, with respect to
18 People versus Harold Gopaul, this matter was sent to
19 this Court to conduct a Mapp/Huntley Hearing. I think
20 this hearing was directed as a result of a decision and
21 order by Judge Calabrese of this court.

22 It does bear noting that there was not any
23 type of Dunaway or probable cause portion of the
24 hearing.

25 The hearing began on April 30th, continued to

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1 May 1st, May 4th, May 5th and concluded today, May 6th.

2 The People produced two witnesses, a
3 Detective Shulman from the 105th Squad, if you will,
4 and a Police Officer Alfaro from the 105th Precinct as
5 well.

6 The defendant also, in addition to
7 introducing a number of exhibits, predominantly
8 photographs, defendant's medical records, the defendant
9 himself testified with respect to issues that are
10 pertinent to the hearing.

11 The Court credits the People's -- testimony
12 of the People's witnesses and makes the following
13 findings of facts and conclusions of law.

14 On or about June 23rd into June 24th, 2008
15 Detective Leonard Shulman of the 105th Precinct, a
16 ten-year police officer and five-year detective, was
17 working a 4:30 p.m., June 23rd, 2008 to 1 a.m. tour in
18 the early morning hours of June 24th, 2008.

19 At some point before his tour was to end
20 between midnight and 1 a.m. he was assigned to
21 investigate a sex abuse allegation. He was notified
22 that a female complainant was physically in the
23 105th Precinct being interviewed by police officers as
24 well as a representative, I believe, of the ACS, New
25 York City ACS or in Nassau County what I would think

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